

HEARING ON BLACK BERET PROCUREMENT: BUSINESS AS USUAL AT THE PENTAGON?

HEARING BEFORE THE COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTH CONGRESS FIRST SESSION

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HEARING ON BLACK BERET PROCUREMENT: BUSINESS AS USUAL AT THE PENTAGON?

WEDNESDAY, MAY 2, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:05 a.m. in Room 2360, Rayburn House Office Building, Hon. Donald Manzullo [chairman of the Committee] presiding.

Chairman MANZULLO. This hearing will come to order. Good morning and welcome to this hearing of the Committee on Small Business. A special welcome to those who have come some distance to participate and to attend this hearing.

I would like to extend an especially warm welcome to General Shinseki. He is a true patriot having served two tours in Vietnam and was wounded twice in combat.

Let me make it clear that this hearing is not about the policy decision to have all active U.S. Army personnel wear berets. Nor is the hearing about what color beret a particular unit within the U.S. Army is going to wear. This hearing is merely focused on the decision to purchase berets from foreign sources.

I readily acknowledge that the Committee on Small Business has no jurisdiction over the policy issues of whether the U.S. Army should wear berets and the color of those berets. These two issues are settled and are not within the jurisdiction of this Committee. The military leaders of this nation who have to make the difficult decisions to place our young men and women in harm's way deserve our total and absolute respect.

The only reason we are holding the hearing today is to discuss the procurement issue. This Committee has both legislative and oversight jurisdiction to ensure that small businesses are not bypassed in the federal procurement process. I would respectfully request that the Committee members limit their questions to procurement issues.

General Shinseki has told me, and I am sure he will tell the Committee, that if he had been informed the berets were being manufactured overseas because of the short time period needed to acquire the berets, he could have changed the date of delivery and possibly other requirements.

Our purpose is to try to get the Department of Defense to follow the existing rules of procurement and possibly to seek legislative remedies.

You will hear in this hearing a gross disregard of the procurement rules. The number of textile manufacturers and apparel and shoe manufacturers in this country continues to dwindle.

Congressman Walter Jones, Jr. was scheduled to testify at the hearing originally scheduled for April 5. That same week Congressman Jones received word that the district he represents lost over 1,000 textile-related jobs.

As chairman of the Committee on Small Business, I have an obligation to these small businesses that are being impacted by the military's refusal to follow the procurement laws. The report of the inspector general of the Department of Defense, dated over two years ago, shows that nearly 60 percent of procurements of military clothing made by the department violate some procurement laws and regulations.

It is ironic. While our Army is ready to fight to keep us free, the Defense Logistics Agency, a totally separate entity, continues to frustrate our laws, which will result in the destruction of our domestic small businesses.

The paramount issue in this hearing is why couldn't these berets be manufactured in the United States.

This hearing is going to be about real people and how real people are impacted by decisions that are made by the DLA in violating our procurement laws.

You will hear the compelling testimony of Michele Goodman, who has a small manufacturing facility in Phoenix. And you will hear about the fact that she has made it a policy for years to employ disabled and severely disabled people who have gone through workshops and whose only type of occupation are the types of positions that Ms. Goodman offers to these people.

These are the most defenseless of all Americans. These are the ones who, in the past, have not been able to work. These are the ones who are impacted whenever the United States government goes offshore in order to purchase clothing and shoes and everything.

That is what this hearing is about, the thousands of Americans that are impacted, the small business that strive to compete on a day-to-day basis.

As a rule of order, I fully intend to keep the questions and answers to five minutes, no four minute and 30 second questions expecting to have the same amount of time to answer the question. We have several panelists and members here.

Ms. Velazquez, as the ranking member, and I, as the chairman, may exercise our discretion to use more than five minutes. I will strictly enforce the five-minute rule. I can assure you of that.

Again, thank you. I now yield for the opening statement from my good friend, the Ranking Member, Ms. Velázquez.

[Chairman Manzullo's statement may be found in appendix.]

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Today's hearing continues our effort to shine light on the contracting practices of the Department of Defense which are effectively deterring this nation's small businesses.

This is the sixth hearing we have held that looks at the contracting practices of this agency. And every time we ask the question, "Why aren't small businesses being awarded prime con-

tracting opportunities,” the answer of the Department of Defense, “Well, we make big stuff, and these are contracts that small businesses just cannot handle.”

First of all, you and I both know that is wrong. Second of all, when a contract opportunity is presented that small businesses can handle, you yank the rug right out from under them by providing unrealistic timelines based on arbitrary deadlines. You then create product specifications that are so restrictive as to defy the imagination, like a beret that is made as one piece.

My concern today is that we are taking opportunities out of the hands of our nation’s economic foundation, our small businesses, for what, on its face, is a subjective deadline.

Why do we have one U.S. manufacturer? I will tell you why, because only one U.S. company has equipment. The machinery used to manufacture the one-piece knitted beret no longer exists, which begs a whole host of questions.

Why is this beret so exclusively made? Is the beret indestructible? No. Is the beret bullet-proof? No. Is the beret wearable in combat? No.

So when I ask the question, the answer I get, the Department of Defense thinks the beret looks better with no seam. Looks better? So now fashion consciousness is the new excuse the Department of Defense uses when they sidestep federal regulations in small business procurement?

I will tell you all that this is not the end of the issue. I want the Army and the entire Department of Defense to know we are going to be holding your feet—your collective feet to the fire on this and other procurement issues.

We will not allow the DOD to carry on as they have previously and use the same old tired excuses they have for the past seven years. And I will tell you that there is no way that this Committee will sit still while small business participation is continuously blocked.

First is contract bundling. Now we are talking about unduly restrictive specification and arbitrary timeliness. Frankly, I wait with eager anticipation to see what DOD will come up with next because these excuses just aren’t going to work anymore.

So I suggest you either come up with something new or do something to solve the problem. I believe that problems such as the one we are examining in this hearing will continue until we pass substantive legislation like the Small Business Contract Equity Act. This legislation give small business necessary protections in government contracting.

Mr. Chairman, I want to thank you for your tenacity in pursuing this issue. I believe that you are right on the mark in holding this contract-specific hearing because it seems that these forums are the only way to get the Pentagon’s attention.

It is my hope that today we can commit to holding regular contract-specific hearing starting with the DLA contract that has affected businesses throughout Ohio and the Midwest.

I want to close by saying that we are here today for one purpose and one purpose only, to defend the interests of America’s small businesses from every quarter. And nowhere are those interests more threatened than when it comes to issues like this. And I be-

lieve that, as we defend those interests, we are protecting the future of the American economy.

Thank you, Mr. Chairman. And, again, I look forward to more investigative hearings like this where we get to the bottom of these practices by the department that are detrimental to our nation's small businesses.

Chairman MANZULLO. Thank you very much.

The first panel is General Shinseki. General?

General SHINSEKI. Good morning, Mr. Chairman.

Chairman MANZULLO. Good morning. Could you pull the mike closer to you?

General SHINSEKI. I will. Can you hear me?

Chairman MANZULLO. Yes, sir.

**STATEMENT OF GENERAL ERIC K. SHINSEKI, CHIEF OF STAFF,
UNITED STATES ARMY**

General SHINSEKI. Okay. Good morning, Mr. Chairman, Congresswoman Velázquez, members of the Committee. I am here to explain the Army's decision last October to authorize the wear of black berets by our soldiers. And, Mr. Chairman, thank you for the opening statement.

I would just add that, subsequent to that decision that the Army announced last October, the Defense Logistics Agency let contracts to meet the Army's requirements.

I'll provide the Army's rationale for its decision to authorize the wear of black beret, and I believe the following panels will address the contracting decisions that led to the production of those berets.

For those members with whom I have spoken with in person, to include yourself, Mr. Chairman, on this issue and other members who may have attended a meeting last week of the House Armed Services Committee, I regret and I apologize for the repetition since some of my remarks will not be new.

But let me just begin by saying 22 months ago, we, the Army, were encouraged to get on and begin the challenging process of changing this magnificent Army, to keep it relevant for the strategic environment of the 21st century, transform the Army, do as much as you can accomplish on your watch but don't break near-term war fighting readiness. That was pretty much the charter, transform, don't break readiness, but do it quickly.

The Army is a large institution, a million soldiers in uniform, and change in large institutions is difficult. Even more difficult is trying to effect a commitment for that kind of change in a short period of time.

But thanks to bipartisan congressional support last year, we were able to build remarkable momentum for beginning the process of change without breaking readiness.

The decision to don the black beret is part of that commitment to change, but it is not a new initiative. It had been considered before.

And when I became the chief in June of '99, the black beret initiative was revisited with me. I deferred any decision on that black beret decision for a year until the summer of 2000 in order to get on with the challenging and more crucial need to transform the Army-at-large.

After generating the requisite momentum for Transformation, I said we would come back and consider the utility of the black beret decision, and so I spent that first year walking the Army, talking to our soldiers, explaining to them our need to transform and educating them on how we intended to go about it.

The very first symbols of that commitment to transform are occurring even today out at Fort Lewis, Washington, where we are standing up our first two interim brigade combat teams.

As we began to achieve momentum, I also began to sense a growing perception on the part of our soldiers that if one were not stationed out at Fort Lewis, Washington, then somehow they were not part of Army transformation, not on the cutting edge of the Army.

And, remembering back to our experience with the 9th Infantry Division High Tech Test Bed, another effort to transform the Army about 20 years ago, we needed the Army to understand that our requirement for change was much broader than just those two interim brigades at Fort Lewis. It was comprehensive. It was about more than just platforms, and everyone needed to be a part of it.

And so, as we engaged the Army that first year, we also rediscovered that this magnificent Army is composed of a number of strong and proud communities, communities which have given us the heritage we enjoy today, our active and our reserve components, aviation and ground units, maneuver and our support formations, and, within our maneuver community, heavy forces, light forces, special operations forces.

All of them are wonderful and important in their own rights. But, as happens with communities, each of those communities tended to see themselves a little more clearly than the larger Army.

We have gone to great lengths over the past 22 months to bring these communities closer together because that is what Transformation and change is going to require. There are still some walls out there, and, while each community is important, none of them alone wins the nation's wars. It takes the Army to win a war.

So the black beret is about building cohesiveness amongst those communities because we will need all of them to transform just as we will need all of them to win a war. Everyone is part of this commitment to change, and, for the vast majority of our 1 million soldiers, this black beret decision is not an issue. Their Army is moving out. They want to be a part of it.

We chose the black beret to symbolize this change because it is the one relevant color that cuts across all community lines. Black is the only color that has been worn by both our heavy and our light formations. And it is worn today not only in the Ranger regiment, but also in our combat training centers by the 11th Armored Cavalry Regiment, the 1st Battalion 509th Infantry, and the 1st Battalion, 4th Infantry Mechanized.

The black beret, therefore, best reflects the Army of the future, that Objective Force we are pursuing, which will combine the lethality and survivability of today's heavy forces with the deployability and agility of our light forces.

The capabilities of this future objective force will be dominant. It will extend the decisive capabilities of today's M1A2 Abrams tank, the M2A3 Bradley fighting vehicle, The Crusader, and Knowledge

Base C4 ISR to a future Objective Force capability that will be responsive and deployable and versatile, agile, lethal, survivable, and sustainable in ways that today's force cannot be.

We will begin fielding this force by the end of this decade. That force will have the capability to put a combat brigade any place in the world in 96 hours, a war fighting division on the ground in 120 hours, five divisions in theater in 30 days.

It will be a strong deterrent to potential aggressors. It will bring unmatched capabilities to the joint team, and it will give the National Command Authority greater flexibility in decision-making and crisis response options.

Part of the decision to move to the Objective Force is this decision to authorize the wear of the black beret to symbolize to all soldiers that they are part of achieving the Army's vision.

The Army's first birthday in the new millennium, 14 June 2001, was chosen to symbolize and to honor our heritage and demonstrate our commitment to the rapid transformation of the Army that we were asked to undertake.

This timing captures both our proud history and our 21st century responsibilities for national defense and service to the nation. We have said that the Army is prepared to adjust its implementation plan to fit the availability of DLA's production schedule. On 14 June the Army will begin phasing in wear of the black beret, and this will continue until complete.

Mr. Chairman, I enjoy the privilege of serving the world's finest Army. And what makes our Army so magnificent is not just our equipment, it is our soldiers. They have readily shouldered burdens that others do not carry. They have accepted hardships and sacrifice and given us professional discipline and uncommon courage in return.

It will take every one of them to transform the Army, just as it will take every one of them to win the next war. And when those soldiers are called upon to defend this nation and our way of life, they will be ready to fight and win decisively. The American people can count on it.

Mr. Chairman, I thank you, and I am ready to answer your questions.

[General Shinseki's statement may be found in appendix.]

Chairman MANZULLO. Thank you, General.

General, as I announced in our opening statement, I am going to ask you questions about procurement and not get into the policy issue. And I would hope that the rest of the members of our Committee would also follow suit on that.

But, General, when you announced on October 17, 2000, that the black beret would become the Army's standard, were you aware that most of the berets could not be procured domestically?

General SHINSEKI. I was not.

Chairman MANZULLO. Okay. And when was the first date that you were aware of that?

General SHINSEKI. My recollection is sometime February of this year.

Chairman MANZULLO. Okay.

General SHINSEKI. Exact date, I can't recall, but some time around the time when it appeared in the media.

Chairman MANZULLO. Do you recall the source of that? Was it the media, or was it from somebody on your staff.

How did you find out?

General SHINSEKI. My guess, it would be probably somebody from my staff bringing to me some information, either from the media or information gleaned.

Chairman MANZULLO. If you had been aware on October 17, 2000, that most of the berets could have not been manufactured domestically, would you have given flexibility to that June 2001 date?

General SHINSEKI. Well, that is a hypothetical, and I have always tried to understand what the question really is. I think you know that I have directed the return of berets that were produced in China, and I think the answer would be I would have adjusted.

We may have gone ahead and begun the process of implementation on 14 June but phased it over a longer period of time. Again, that—

Chairman MANZULLO. So that you could have had American production?

General SHINSEKI. Correct. That would have been generated by what available stocks could have been generated. And I, in fact, to this day don't have a solid number, but my guess is probably yes.

Chairman MANZULLO. Okay. That is all the questions I have.

General SHINSEKI. Okay.

Chairman MANZULLO. Thank you.

Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, General. General, you were given a copy of the Justification for Other than Full and Open Competition?

General SHINSEKI. I was just handed the document.

Ms. VELÁZQUEZ. Would you please—can you please read the highlighted portion of that?

Chairman MANZULLO. Could you identify that document for the Record?

Ms. VELÁZQUEZ. Justification for Other than Full and Open Competition.

Chairman MANZULLO. And the date of that, Ms. Velázquez?

Ms. VELÁZQUEZ. November 2000.

Chairman MANZULLO. Thank you.

General SHINSEKI. This is the first time I have seen this document, Congresswoman.

Ms. VELÁZQUEZ. General, can you read the highlighted part of that?

General SHINSEKI. Yes. "The Army will be seriously injured if this action is not approved."

Ms. VELÁZQUEZ. General, with all due respect, if Army personnel are not all wearing black berets by June 14, 2001, will the Army be seriously injured?

General SHINSEKI. The statement is not mine, Congresswoman. I think the fact that I have directed that the berets that were made in China be returned suggests that I am prepared to make adjustments here.

Ms. VELÁZQUEZ. General, that is a statement made by the Department of Defense. Do you agree with that statement?

General SHINSEKI. Well, I am not in a position to comment on it. I don't write these contracts, and so I'd be——

Ms. VELÁZQUEZ. It is just a simple yes or no answer.

General SHINSEKI. About the Army being seriously injured? I don't know that the Army would be seriously injured.

Ms. VELÁZQUEZ. You don't know.

General SHINSEKI. No.

Ms. VELÁZQUEZ. General, did you tell the Defense Logistics Agency to buy a seamless black beret?

General SHINSEKI. I don't believe that that was guidance, but I do believe that the Army's standard beret is something called a seamless beret. I didn't know there was any other kind.

Ms. VELÁZQUEZ. Did you tell the DLA that, under no circumstances, could the beret they bought to fulfill your requirement have a seam or be made in two pieces?

General SHINSEKI. I am not aware that any statement was made by me to that regard.

Ms. VELÁZQUEZ. General, I have read and reread your statements on the beret issue and haven't seen any directions that you gave DLA regarding a one-piece or a two-piece beret. Given the fact that many U.S. small businesses could have manufactured the berets if the berets were made in two pieces, can I get a commitment from you that the tan berets will be competed among small U.S. manufacturers?

General SHINSEKI. Congresswoman, again, I don't—I am not in the procurement business. I make a request for beret by color and design. Beyond that, those acquisition authorities, procurement decisions, are made elsewhere.

And I would respectfully suggest that——

Ms. VELÁZQUEZ. General, what is your position? You are chief of staff, aren't you?

General SHINSEKI. I am.

Ms. VELÁZQUEZ. So you cannot state such policies so that you and the Army comply with statutory Congress mandates and goals and procurement process?

General SHINSEKI. I do support the law. I do support the law with regard to the procurement policies outlined.

Ms. VELÁZQUEZ. General, I am very concerned about the commitment of federal agencies to achieving their goals for doing business with small, small disadvantaged, and women-owned business. Will you assure me, General, that the commitment to doing business with small, minority owned, and women-owned businesses comes from the top in the Army?

General SHINSEKI. Congresswoman, I will be very happy to provide an answer for the record, but I would suggest to you that I think the Army has been quite responsive in exceeding the goals that have been outlined for accomplishing these parameters.

Ms. VELÁZQUEZ. Sir, with all due respect, I think that your staff failed in briefing you. Last year, the Committee staff on the Democratic side, we produced a study, and we did a research about how the federal agencies, particularly the department of defense, failed small businesses in America.

General SHINSEKI. I can only speak for the——

Ms. VELÁZQUEZ. And the biggest offender, General, is the Department of Defense. Were you aware of that study?

General SHINSEKI. I am not. You have information I don't have, Congresswoman.

Ms. VELÁZQUEZ. I will submit it to you, but it is unbelievable. The Washington Post and many major U.S. papers covered that research, covered that study, and you are going to come here today and say that you do not know, you are not aware?

General SHINSEKI. No. I am suggesting to you that I can speak for the Army, Congresswoman. I would be very happy to provide the details of the Army's performance in these categories, which I'm led to believe, has exceeded, in most categories, the goals that were established. And, in fact, in terms of women-owned businesses, the Army is the first agency, federal agency, to have exceeded a billion dollars. But I will provide details for the record.

Ms. VELÁZQUEZ. Do you have any details in terms of how did you comply with women-owned businesses? Did you achieve your goals?

General SHINSEKI. I think that may be one of those categories that we may not have achieved, but I would say that we are the—probably in that regard, the first federal agency to achieve a billion dollars. But I will provide that in detail for the record.

Ms. VELÁZQUEZ. What about the 8(a) goal?

General SHINSEKI. I will be happy to provide. I just don't have those details with me.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you, Ms. Velázquez.

Mr. Hefley.

Mr. HEFLEY. Thank you very much, Mr. Chairman. I appreciate you holding the hearing. I have as much concern as you do about the berets being purchased in China. I don't think I like this. I don't think General Shinseki likes this.

And I think from your opening statement and from our ranking member's questions, I really question why the chief of staff is here today. I am not sure he's the one we need to have here.

Chairman MANZULLO. If I may, if you would yield on that—

Mr. HEFLEY. Surely.

Chairman MANZULLO. My sole question in asking the general to come here is that there is a line between the person who makes the decision and the people that carry out that decision in terms of procurement. And I requested General Shinseki to come here and to tell this Congress and, obviously, the nation of his limited knowledge as to what actually happened with procurement.

His job is to fight the wars and to make the orders, not to carry out the procurement. And the procurement people will be testifying later on.

Mr. HEFLEY. And that is good. And I think those are the people we ought to be talking to because the general is responsible for determining what the needs are to carry out the mission of the Army. And then he passes those needs on to the people who purchase the equipment to meet those needs.

I don't think the general is the one we ought to be directing our fire to this morning. He is not the guy that made this decision.

I had a question about the decision on the berets, and the general and I have talked about this considerably, and I understand it a great deal better now. So I am not worried about that.

I am concerned, General, about the purchase of the berets from China. And, as a member of the Armed Services Committee, I have concern about us purchasing and relying on suppliers from other countries, particularly countries that aren't known as our greatest allies for our military equipment.

General SHINSEKI. Sure.

Mr. HEFLEY. I think we ought to be very, very careful about that, and so I do have that kind of concern. So if any good comes this morning, General, out of your being here, it may be that you will take back with you the strong concern that this Committee has and I think, in turn, the Congress, as a whole has, that we don't like military equipment, such as the berets, being purchased in foreign countries, particularly military equipment that could be done by small businesses across this country. And I think you share that feeling.

So since I don't exactly know why we have you here today, I don't have any particular questions, General. But I do hope that you understand the concern that we have about the procurement process. And insofar as you can influence that process, I would hope you would pass our feelings along.

General SHINSEKI. I will.

Mr. HEFLEY. Thank you.

General SHINSEKI. Thank you, Congressman.

Chairman MANZULLO. Mr. Pascrell.

Mr. PASCRELL. Thank you, Mr. Chairman. Mr. Chairman, we hope that some good comes out of this or that we change.

It is obvious that the DOD has not heard the clarion call from this Committee over the past four years. They are constantly coming back.

And I know, General, you are not in the business of procurement, but you and those that preceded you make the decisions. And there is an organization here. There is a link between the decision and those in logistics who implement and follow it out.

And I thank the chairman for stepping up to the plate. This hearing is a clarion call to me, speaking of clarion calls, to all small businesses in the United States of America to get into the process of getting on the bidding list because what else is being manufactured in other countries for our troops? We don't have enough money for ammunition, but we have money for the making of hats.

And God knows how we look to the rest of the world when we are asking you these questions, General. And all due respect to your great, outstanding record, but these are the cards that are dealt with us, and we are going to play those cards.

General SHINSEKI. Sure.

Mr. PASCRELL. The Department of Defense's grade on the scorecard which we are referred to many, many times is D minus when it comes to relationships with small businesses, when it comes to the emphasis of procurement. That is not a very good record.

And if you are telling us today that you have nothing to do with where the purchases are made in the process itself, I personally find that hard to believe. I am not questioning your honesty. I am

questioning here if, as the person in charge making the decisions, if you say, "Let us stick to the rules and the laws that we purchase in America," logistics is going to follow through on what you say.

Do you know of any other items that our troops wear that are made in foreign countries?

General SHINSEKI. Not personally, Congressman.

Mr. PASCRELL. You are not sure about that?

General SHINSEKI. I am not. I just haven't done the research.

Mr. PASCRELL. Well, it is interesting that the first shipment of berets that came into this country, following through on your order, have been less than what was ordered in terms of aesthetics, in terms of quality.

And while this is devastating to know that taxpayers' money was used for inferior products that, I read in the paper today, we may not even use since we have just made an about face. Is that correct? Yesterday, last evening, you made a decision. Could you tell us what the decision is?

General SHINSEKI. Well, six weeks ago we recommended that—and it's specifically to the production of berets in China. When the issue initially came up, the recommendation from the Army was that we not use these berets. But the decision is not mine. We don't contract for those berets, and we don't have the authority to de-contract for them. But last night the directive was to take those berets that were made in China and to return them for disposition.

Mr. PASCRELL. And where is the money going to go? Who is paying for these berets that we are not going to use, that we are going to discard because—

General SHINSEKI. I don't have an answer, Congressman.

Mr. PASCRELL. I am sorry?

General SHINSEKI. I don't have an answer. Again, I don't—

Mr. PASCRELL. Well, we are trying to get us all on the same page, Mr. Chairman. That is what you are trying to do.

General SHINSEKI. I think you are on—

Mr. PASCRELL. It would seem to me we are all trying to get on the same page so that there is a relationship between the decision and the procurement so that logistics in DOD knows quite well the feelings of your office, knows quite well the feelings of those people who sit on this Committee, because we have been attacking the question of bundling here for four years.

General SHINSEKI. Right.

Mr. PASCRELL. And we are getting nowhere, so we would all like to be on the same page.

Did you know—when did you first know that these berets were going to be made in China?

General SHINSEKI. As I indicated—

Mr. PASCRELL. By the way—excuse me, Mr. Chairman—it could be China, it could be Costa Rica.

Chairman MANZULLO. Mr. Pascrell, your time is up.

Mr. PASCRELL. Just answer the question.

Chairman MANZULLO. Well, let the gentleman ask.

General SHINSEKI. I would—I go back to the statement to—that I gave the chairman some time in February.

Mr. PASCRELL. Some time in—

General SHINSEKI. Some time in February. I don't have a date certain.

Mr. PASCRELL. 2001?

General SHINSEKI. 2001, that is correct.

Mr. PASCRELL. That is the first you knew about it?

General SHINSEKI. That is correct.

Mr. PASCRELL. Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you, Mr. Pascrell.

Mr. Grucci.

Mr. GRUCCI. General, how are you today?

Chairman MANZULLO. Mr. Grucci, before we proceed, I will remind the Committee that these mikes are live at all times—and the staff. Go ahead.

Mr. GRUCCI. Good afternoon. Is it afternoon? No, it is still morning.

General SHINSEKI. Good morning.

Mr. GRUCCI. Good morning, General. It is great to see you again, and I appreciate the time that you have taken out of your schedule not only to be here, but certainly to come and to visit with members of Congress throughout these last sessions.

Chairman MANZULLO. Mr. Grucci, could you speak closer to the mike, please?

Mr. GRUCCI. Sure. Is that any better, Mr. Chairman?

Chairman MANZULLO. Yes.

Mr. GRUCCI. I appreciate the time that you spent visiting not only with me, but with others in Congress in expressing your interest in our views and the issues that are important to us.

I don't have any specific questions of you, sir. I don't believe that at your level this issue—I find it kind of disturbing that this kind of an issue is at your level. I would have thought that it would—it could be handled more effectively, more efficiently at a procurement level.

And I understand the chairman's desire to have you here, and I concur with that to demonstrate, perhaps, what your roll was in this whole process. And I think that that's healthy.

I think that the issue for me is not what type of head gear the Army will wear. That's solely in the discretion of folks like you. The procurement of that does raise some questions, and I think that would be more appropriately addressed to the procurement officer.

And we are certainly concerned about small business, about minority businesses having an opportunity to fully access the five percent set aside that's there for them. And I believe we are not at that level yet, and that is of a concern to me.

But this particular issue, and the questions are more appropriate at a level beneath you. And I appreciate you being here, and I just wanted to commend you on an outstanding job that you have been doing with our army and with you taking the time to visit even with freshman congressman.

So I thank you, and I yield back the rest of my time, Mr. Chairman for questions of others that I believe would be more appropriate to ask of.

General SHINSEKI. Thanks, Congressman.

Chairman MANZULLO. Thank you, Mr. Grucci.

Ms. Christian-Christensen.

Ms. CHRISTIAN-CHRISTENSEN. Thank you, Mr. Chairman.

First, I would like to commend the chairman and ranking member for calling this hearing. I realize we haven't gotten into the real substance of the meeting as yet, but it is important that we be constantly vigilant on the Department of Defense and their procurement practices, especially as regards small and disadvantaged businesses.

I want to welcome General Shinseki and thank you for being here. Thank you for your service and your efforts and commitment to transforming and strengthening our army to meet the challenges that we face today.

General SHINSEKI. Thank you.

Ms. CHRISTIAN-CHRISTENSEN. Like others, I am one of those who had issues with the change in the beret, as did my husband, who is a 35 year Army retiree. But I think from your testimony I better understand, at least, the rationale for why the beret was chosen whether I agree with it or disagree with it.

As both the chair and ranking member have said, our issue is with procurement, so that is going to be where most of my questions would go. But I do have maybe two questions for you.

In light of the decision to change the beret, the surrounding controversy around it, have you seen any impact on the morale of the troops? Is it affecting the men and women in uniform?

General SHINSEKI. I have not. And, as I indicated, I have certainly spent a good bit of time walking the Army to talk to youngsters.

Two nights ago I was with the 3rd Battalion, 75th Rangers, down in Fort Benning, Georgia, and they were loaded up and parachuted, ready to do a rehearsal of a night operation. And I spent hours walking through that battalion, one of three. They don't have a problem with this, and neither does the vast majority of the rest of the Army.

Ms. CHRISTIAN-CHRISTENSEN. Okay. Thank you for that answer. And just to further clarify the decision-making process, because I am not sure that I am clear. Even though I know Congresswoman Velázquez asked the same question, whose decision was it to have the beret be a seamless beret since that seems to have determined where it was going to be produced?

General SHINSEKI. I don't know whether—well, I would have to assume it was a decision. But the Army's standard beret for years has been what I have come to understand as a seamless beret, and that is the uniform that the Army has worn.

But, frankly, until I saw this statement that was provided by the Congresswoman and the discussion that there was such a thing as a seamed beret—not brought to my attention and unaware of it.

Ms. CHRISTIAN-CHRISTENSEN. And I would also, just in closing, Mr. Chairman, just join my concerns to that of Congresswoman Velázquez and ask that, given this particular circumstance and controversy and the fact that the Department of Defense does have such a poor record with regard to our small businesses, that in the future that you would use the influence of your office more in ensuring that, when you have things that have to be procured, that the department comply with the Berry Amendment and do more to

meet the goals that we have set for small, disadvantaged, and minority-owned businesses.

General SHINSEKI. Certainly.

Ms. CHRISTIAN-CHRISTENSEN. Thank you.

General SHINSEKI. Thank you.

Ms. CHRISTIAN-CHRISTENSEN. Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you.

Mr. Bartlett.

Mr. BARTLETT. Thank you very much.

General SHINSEKI. Congressman.

Mr. BARTLETT. General, welcome.

General SHINSEKI. Good morning.

Mr. BARTLETT. Although I still have concerns about the policy decision, I just want you to know that does not in any way impact my respect for you or my admiration for your commitment to do what you think is best for our Army.

I hope that another symbol can be used to signify the transformation of the Army. But if berets are to be it, then can we have your assurance that, to the extent that you have influence, that you will help to make sure that all future berets are bought in America in conformity to the Berry Amendment?

General SHINSEKI. Yes, sir.

Mr. BARTLETT. Thank you. Thank you very much. I have here a copy of the article from the Washington Times today. And I just want to read one quote from it made by Mr. Wolfowitz and ask you what you think that means.

"Therefore, I direct the Army and the Defense Logistics Agency, DLA, to take appropriate action to recall previously distributed berets and dispose of the stock." Now I need to put that in context. That's berets made in China. What do you think "dispose of" means?

General SHINSEKI. I am not sure, Congressman. I am about a month away from implementing the wear decision of the black beret, and I needed to get on with distributing and giving guidance.

And the issue of the berets made in China is still a topic of discussion, and so my action was to direct that these berets be returned for disposition. And we would use the available stocks to get on with the decision of implementing the wear of the black beret. I am not sure what—

Mr. BARTLETT. I am very supportive of your decision. I just think that most of America is very supportive of the decision that troops will not be made to wear a beret made in China. But I am a child of depression, and I hate waste. And to return—to dispose of these berets in a local incinerator or something is unthinkable to me. And I am wondering if we can find a way that we might involve our small business community. And we have got the lemon here, let us see if we can make lemonade.

And I would hope that we could work together and see if we can involve our small business community so that some good can come of this.

General SHINSEKI. What a great idea.

Mr. BARTLETT. I want to thank you very much for appearing before our Committee today. I know how busy you are. And thank you very much for coming.

General SHINSEKI. Thanks, Congressman.

Mr. BARTLETT. Mr. Chairman?

Chairman MANZULLO. Thank you.

Mr. Udall.

Mr. UDALL. Thank you very much, Chairman Manzullo. I very much appreciate you and the ranking member focusing in on this hearing. I think it is an important area, and I am glad we are here today doing that.

I also want to thank the general for his service. And let me get directly to questions here.

General, in your written testimony you say that the Army's beret decision is about building trust and confidence in our formations, formations that will be defending this country in the 21st century.

I think what you are hearing from this Committee is that the issue for us is about building trust and confidence in America's small businessmen and women. And, for us, it is very hard to build that trust when American's read the morning newspapers and hear on the evening news that the United States Army has purchased berets that are made in China, thus bypassing the American small businessmen and women. Do you think that this builds confidence in American businessmen and women to see this kind of action occur?

General SHINSEKI. I would take your lead here, Congressman, and I would say probably not. But, again, purchase of berets is not done within the—inside the Army. And I apologize that I am not more conversant on it, but I think following panels will be able to address how those decisions were made.

Mr. UDALL. Thank you, General. General, the other context for why we are here today is a major decline in our textile industries. We have seen the kinds of industries that produce these kinds of products decline rapidly. And we have lost hundreds of thousands of jobs, tens of thousands of jobs in this country because many of those have gone to low-cost markets, low labor markets.

And it seems to me one of the jobs of our federal agencies, including the military is try to help us to rebuild those industries if we can. And I hope that we have your commitment and the Army's commitment that you will try to take a look at doing that in the future.

And I am wondering, what are you doing as a result of this incident to see that this doesn't happen again?

General SHINSEKI. Well, I am certainly far better educated about the procurement process. Again, it is not something that I am, at least in this instance, involved in directly. But I am sensitive to the issues.

Mr. UDALL. Thank you, General. I appreciate very much you coming today.

General SHINSEKI. Thanks, Congressman.

Mr. UDALL. Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you.

Mr. Ross.

Mr. ROSS. Thank you, Mr. Chairman.

And, General, thank you for being with us today.

General SHINSEKI. Good morning.

Mr. ROSS. On the beret issue, the only manufacturer with a plant located in the United States happens to be from my home state of Arkansas, Cabot, Arkansas. It is not in my district, but it is in my home state, so it is the next best thing to be.

You know, the numbers I am looking at, nearly 5 million berets were made, and, yet, only 1.2 million were made at the only facility in the United States, which is in Cabot, Arkansas.

And, to kind of follow up on Congressman Udall a little bit, I mean, I live in a state where I am sick and tired of losing population. I am sick and tired of losing jobs. And the textile industry has especially been hit hard in Arkansas.

And, not only berets, but why can't the Army help us save what few textile industries are left out there because these are big contracts. There are a lot of things, berets, uniforms, shirts, ties that these textile industries could be making.

In the United States, if we would focus on areas that are economically depressed, in areas that have lost a lot of textile jobs—you have got a trained workforce in these areas with a nice facility, but the doors are padlocked.

It looks like we ought to start in America, and we ought to start especially in light of the fact that we are talking about taxpayers' money. These are tax dollars, so why aren't we using them more in economically depressed areas? Do you have any thoughts on that?

General SHINSEKI. I agree with you, Congressman. But, again, I don't write these contracts. I happen to agree with you, but I understand your concern.

Mr. ROSS. Well, I hope that whoever does write them will take heed to this and recognize that I come from a district where the average household income is \$19,000. There are a lot of people that would love to work at textile manufacturing plants, and they would do it with pride and honor, knowing that they are making uniforms and accessories for our United States military.

So I hope whoever writes the contracts and whoever's in the room that has some influence on this will think about that next time, that there are people in America that are hurting. And we have a lot of trained workers out there no longer working because the textile industries have been closed.

And let us try to do better and be better focused in the future. I think it could be a huge boost economically for economically depressed areas in Arkansas and elsewhere.

Thank you.

Chairman MANZULLO. Thank you, Mr. Ross.

Ms. Kelly, do you have any questions?

Ms. KELLY. Mr. Chairman, I am going to pass for a few minutes. If you can come back to me, I would appreciate that.

Chairman MANZULLO. Okay. You are the last person.

Ms. KELLY. I am sorry.

Chairman MANZULLO. I do have one question to ask the general, and perhaps, during that period of time if you want to get your thoughts collected, then you would be the last person to ask questions.

General, could you—in order for clarification, could you state the relationship that you have as chief of staff of the Army with the Defense Logistics Agency?

General SHINSEKI. I am not sure what you mean by relationship, but there is not a formal one. In other words, the Defense—

Chairman MANZULLO. It is a separate agency, is that correct?

General SHINSEKI. It is. It comes under the Department of Defense. It is outside the Army. I know that they exist, but the request for filling a requirement normally goes through an ordering process that results in contracts being written by the Defense Logistics Agency to fill the requirement that the Army has requested.

Chairman MANZULLO. Okay. And the reason I asked that is because there are a lot of questions whose answers you don't know, and I wanted to establish the relationship between you and the DLA.

General SHINSEKI. Sure. Thank you, Chairman. The DLA does not work for me if that is what you are asking. They do not work for the Army. They are not an Army—

Chairman MANZULLO. They are not under your command?

General SHINSEKI. No, they are not.

Chairman MANZULLO. Okay.

Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chairman.

General Shinseki, thank you very much for appearing before the Committee today.

There is one question I wanted to ask about the manufacture of the berets. And that is, it is my understanding that there may not be available in the United States some one agency or one industry that can produce enough of these in a short enough period of time. Is that correct?

General SHINSEKI. I will defer the specifics of that to the following panel. My understanding though, the part of the reason we are here, is that it is apparent that they cannot all be produced here.

Ms. KELLY. I thank you very much. I also want to compliment you on the terrific job that I think you have been doing for us as the leader of our army. I want to say that we have had some dealings with some areas in my district, and you have been extremely helpful, and I do thank you very much. And I thank you for appearing here today.

General SHINSEKI. Thanks, Congresswoman.

Chairman MANZULLO. Ms. Velázquez has the last question.

I just want to state that one of the purposes of this hearing is to try to find out if any additional laws are necessary in procurement. And I have come to the conclusion—I am sure Ms. Velázquez would also—that whenever somebody makes an order and that order cannot be fulfilled domestically, that there has to be a personal notice given to the person who makes that order, which may have avoided this entire controversy in the first place.

General SHINSEKI. Sure.

Chairman MANZULLO. Ms. Velázquez.

Ms. VELÁZQUEZ. General, are you aware who do the DLA answer to?

General SHINSEKI. The DLA is a Defense Department Agency and responds, I think, most directly to the undersecretary for acquisition on the staff of the Secretary of Defense.

Ms. VELÁZQUEZ. Thank you.

General SHINSEKI. I believe that is the appropriate relationship. And the following panel will probably have more specific and a better answer than I have been able to give you.

Chairman MANZULLO. General, I want to thank you for your service to this country. I want to thank you for your patience in this process. I thank you for taking the time and especially your candor this morning.

General SHINSEKI. Thanks, Mr. Chairman.

Chairman MANZULLO. Our second panel is Congresswoman Lois Capps of the 22nd District of California and Congressman Walter B. Jones, Jr. from the Third District of North Carolina.

Okay. The second panel is here, and let us start with the Congresswoman Lois Capps of California. Congresswoman?

STATEMENT OF HON. LOIS CAPPS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, 22ND DISTRICT OF CALIFORNIA

Ms. CAPPS. Thank you, Mr. Chairman. It is such a pleasure to be here this morning.

I commend you, Ranking Member Velázquez, as well as Chairman Manzullo and the entire Committee for your interest in this most important subject.

In the interest of time, I am submitting my written testimony for the record, and I will summarize my statement for you.

Chairman MANZULLO. All the statements will be admitted without objection. Thank you.

Ms. CAPPS. Thank you.

As you know, last night, the Pentagon announced that it had cancelled contracts with three companies for foreign-made black berets. The Pentagon has said that it did this because of "late deliveries and substandard work on these contracts."

I am pleased that the Pentagon has cancelled these contracts and that plans to seek out the most appropriate domestic source available.

And I have been calling for this since the middle of March. I wrote a letter to President Bush. It was cosigned by 79 of my House colleagues from across the political spectrum requesting that the administration reconsider the Army's contract. To date, I have received no response from the administration.

As we said in our letter, the Pentagon had made a decision to purchase over 4 million black berets from companies manufacturing them in foreign countries, including China, Romania, and Sri Lanka. This decision was ill-advised and poorly thought out.

Purchasing the berets from overseas companies could easily have undermined the very morale and unity the Army was attempting to instill in its forces as it set out to outfit soldiers in matching head gear.

The Army imposed an arbitrary deadline for the purchase of the berets by June 14, 2001. This resulted in sending this business to foreign companies and cutting U.S. manufacturers out of the bid-

ding process. This cost American firms millions of dollars and has probably wasted a lot of taxpayer dollars as well.

These contracts which would normally go to U.S. small businesses reportedly totaled \$30 million. But in its decision to purchase black berets from foreign suppliers, the Defense Logistics Agency bypassed normal procurement procedures. The DLA did not generate normal public notification for bidding prior to awarding two manufacturing contracts.

It appears this action was in violation of the Competition in Contracting Act. DLA also waived the Berry Amendment. The Berry Amendment is a staple of Defense procurement law. It requires the Department of Defense to buy clothing and other textiles made in U.S. factories of 100 percent American components.

It is true that waiving the Berry Amendment is permissible in order to meet high volume requests or tight time constraints. But I have been informed that the American apparel industry could have produced the one-piece berets the Army requested rather than the two-piece sewn items the American firms currently manufactured if they had been given sufficient lead time to fulfill this order.

I was also disturbed by press accounts that awarding these contracts to foreign firms may have been more expensive to American taxpayers. It was reported that the cost of a beret made overseas ranged from \$4.36 to \$7.20 compared to \$6.30 that was being charged by the sole American manufacturer.

And this whole fiasco has cost taxpayers money as the Army has tried to address the questions raised by buying them overseas.

The Department of Defense should employ its traditional procurement process that ensures fair and open competition and cost-effective military purchasing standards.

Mr. Chairman, I believe Congress should continue to support improvements in the department's acquisition programs. I hope the Pentagon will address the challenges of this complex area and protect the interests of the department, of American businesses, and, ultimately, the taxpayer.

Military uniforms are a powerful symbol for U.S. soldiers, representing who they are and what they stand for. That is why we must give American companies the first opportunity when it comes to government purchases. This reflects United States law as well as basic common sense.

Mr. Chairman, thank you for the opportunity to appear before your panel.

[Ms. Capps' statement may be found in appendix.]

Chairman MANZULLO. Thank you, Ms. Capps.

Mr. Jones.

**STATEMENT OF HON. WALTER B. JONES, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NORTH CAROLINA, 3RD
DISTRICT OF NORTH CAROLINA**

Mr. JONES. Mr. Chairman, I want to thank you and the ranking member and Committee members for giving me this opportunity. I will also summarize very briefly my comments.

As you know, I am a member of the Armed Services Committee along with some other members of your Committee. And I must say

that when I first heard this decision, as Representative Capps made reference to, I was incensed and outraged by the decision. And I also wrote letters to the Department of Defense as well as to the President of the United States.

In my district, the Third District of North Carolina, we have three military bases, Camp Lejeune Marine Base, Cherry Point Marine Air Station, Seymour Johnson Air Force Base, and I am privileged to represent 60,000 retired veterans and retired military in that district.

And I would like to say that the majority of those who communicate with our office were outraged by this decision. I am pleased to tell you that two former rangers walked all the way from Fort Benning to Washington, DC to express to the United States Congress their outrage. Both these gentlemen were former rangers who had served both in the invasion of Panama as well as the Vietnam War.

David Nielsen, who is here today—Sergeant David Nielsen, a former Ranger—actually himself and others walked 750 miles to Washington, DC from Fort Benning, Georgia to let the American people as well as the Congress know their outrage.

Chairman MANZULLO. Congressman, could you have him stand up please?

Mr. JONES. Would Sergeant David Nielsen stand if he is here?

Chairman MANZULLO. Thank you. Proceed.

Mr. JONES. Thank you, David.

Mr. Chairman and Ranking Member, I also want to say that when we have a military that today pilots are not able to fly because of money for parts, many of the units do not have ammunition, and a decision was made just because a—the thinking was changing the color of a hat or the beret was worth \$23 million when our men and women in uniform need the help now, I think that in itself is a decision that shows that it was very short-sighted to be honest with you.

Mr. Chairman, what I want to talk about today also in the two and a half minutes I have left are the small businesspeople in my district. And you are exactly right. The week before the decision, 1,000 employees in my district were laid off by two companies.

In addition, I want to read very quickly I received a letter from a manufacturer in North Carolina, and this is what he said. He wrote to me and said that his small textile business supports 80 families, and, yet, he struggles to keep his plant operations open because he has to compete with cheap labor and good from foreign competitors.

He would have gladly spent the money necessary to convert some of his operations into a facility that could help produce the berets for our men and women in uniform.

Mr. Chairman and Committee members, I actually talked to this gentleman, and he told me that he could do it. He could make the conversion and still make money and ensure the jobs for those 80 people and their families that work for him.

And I must say that I appreciate this Committee more than I can tell you because there is no excuse, no excuse, in bypassing the Berry Amendment. And I am very grateful that you are taking this issue up.

Let me say that I decided to introduce legislation, this H.R. 1352 that will hopefully help prevent a situation like this from ever happening again. The changes my legislation makes are simple, but my hope is that these minor adjustments will give pause before any future decision to unnecessarily waive the Berry Amendment occurs.

Mr. Chairman and Ranking Member, I want to say to you today that this has been a ill-fated decision made by the Army from day one. And I hope that we, as a Congress working with the administration, would do what we can to stop this outrageous decision that was made.

It is not fair to those men and women who serve in the military, who respect the Rangers. It is not fair to the small businesses of this country that they are not given the opportunity to bid for this work.

So, again, in closing, I want to thank you for giving me this opportunity to be with you today. Thank you.

[Mr. Jones's statement may be found in appendix.]

Chairman MANZULLO. Thank you very much. I want to assure you, Congressman Jones, that if Ms. Velázquez and I have to subpoena and examine every Berry waiver, then we are prepared to do that. We are also prepared to introduce legislation that would tighten up the authority process on who could waive it.

We noticed that a press release was put out yesterday by the Senate Small Business Committee agreeing that it has to go to the highest level as opposed to somebody six rungs down the ladder. But we are going to continue to be ever vigilant over this.

We also noticed that there are already laws on the books that provide for the cardinals of the appropriations Subcommittees to personally sign off on transfers, I believe, from one account to the other in the Department of Defense.

And I think the only way that we are going to be able to straighten out the horrible procurement process going on is to allow members to be personally involved in it.

Ms. Velázquez's family is involved in the printing industry, and my family is involved in the restaurant industry. We are both small businesspeople. We have a passion to protect the small people of this nation, and we also happen to be members of Congress.

So we take that passion along with the authority we have to do everything we can possible do to keep those jobs here in America. Thank you both for coming.

Ms. Velázquez.

Ms. VELÁZQUEZ. No. I just echo your views, and I just want to thank you for your commitment and coming here before us to share some of the experiences that your own constituency has been facing with the Department of Defense and other federal agencies.

And, again, our commitment is to make sure that the Department of Defense and any other federal agency complies with the laws as they have been stated by the United States Congress.

Thank you.

Chairman MANZULLO. Mr. Grucci.

Mr. GRUCCI. I have no comments or questions. Thank you, Mr. Chairman.

Chairman MANZULLO. Does any member have any questions to ask of our fellow members here? I see Ms. Capps is anxious to leave.

Mr. Bartlett, and then you are next.

Mr. BARTLETT. I want to thank my two colleagues for coming to testify today.

Walter, you and I served together on the Armed Services Committee. I know that we both share an admiration for our military and a commitment to do the very best that we can, and I know that that is shared also by Lois.

I share with you, Walter, the conviction that the original decision was a wrong decision. And here we are now this far down the road. What we need to do now is to stop and take stock of where we are and what now is in the best interest of our military and the best interest of our small businesses and the best interest of our country.

And I continue to believe that perhaps a better symbol could be chosen as to signify the transformation of the Army. And we in the Congress, I believe, have a responsibility there that we share with the military in our hope that the Congress will step up to its responsibility.

It is a very important hearing today because it holds the Armed Services Committee in deference to this Committee. And I am pleased to serve on both of them.

The Armed Services Committee was delaying any pending action on this out of deference to this Committee. So this is a very important Committee hearing today. And I want to thank my two classmates. All three of us came into the Congress together.

Thank the Chairman and the Ranking Member for calling this.

And I want to tell you, Walter, that I am very supportive of what you have been trying to do, and I hope that we in the Small Business Committee and the Armed Services Committee, in working together now with the Army, can make sure that the right thing happens for our American troops and our small businesses in America in general.

Thank you very much.

Chairman MANZULLO. Congresswoman Millender-McDonald.

Ms. MILLENDER-McDONALD. Thank you, Mr. Chairman.

And I would also like to thank the chairman and the ranking member for convening such an important hearing.

I would like to thank these two fine congresspersons who are before us because it makes our life a little easier when we are here in Committee, and you come before us, and you are not part of this Committee, but you are also touting those things that we are touting. Made in America is so important to all of us, and we want to continue to keep that banner high.

Again, thank you too for coming this morning.

Chairman MANZULLO. Okay. The second panel is excused. I believe we have a vote, is that correct? Okay. We will reconvene this hearing as soon as we are done with the vote.

[Recess.]

Chairman MANZULLO. The Committee will reconvene. I have been advised that we have about two and a half hours before the next vote.

The third panel, I believe, is in the process of sitting down, and, as soon as you are ready, General Glisson, the director of the Defense Logistics Agency.

General.

**STATEMENT OF LIEUTENANT GENERAL HENRY T. GLISSON,
DIRECTOR, DEFENSE LOGISTICS AGENCY**

Lieutenant General GLISSON. Good morning, Mr. Chairman. I appreciate the opportunity to be here today to answer questions and discuss the acquisition strategy followed by the Defense Supply Center, Philadelphia, to procure the black berets for the Army.

I have prepared a written statement for the record. I would like to ask that be entered.

Chairman MANZULLO. All written statements will be entered in the course of this hearing without objection.

Lieutenant General GLISSON. Thank you, sir.

I would like to take just a few minutes, if I may, and talk about the sequence of events that took place that allowed us to get to the point where we are today. And I would like to start, if I may, with the requirement.

In October, as was previously discussed, the Chief of Staff of the Army made the announcement that he intended to place berets on the heads of all soldiers.

In November of last year, my Supply Center in Philadelphia received a requirements document from the Army that basically said that they wanted 1.3 million berets by April 2001 to issue the first beret to the Army, 1.3 million berets by July of 2001 to issue the second beret to every soldier. That required an initial sustainment for replacement, and so forth, of an additional 1.3 million berets or about 3.9 million berets.

What that meant for us in the acquisition community was we had a requirement for a high production surge during the February to July time-frame, and then there would be a sustainment requirement thereafter of about 100,000 to 150,000 berets a month.

Now the Supply Center in Philadelphia was exceptionally well prepared for this task, and the reason they were was for a couple of things.

First of all, they are the primary buyer for the Military Services of all clothing and textile products and, particularly, enlisted head gear for the military. And they have been doing this for many, many years. They know the marketplace very well. They know most of the manufacturers, and they know the manufacturing process.

And the issue of potential issue of berets to the entire army was not new. The Army had considered such a thing in 1990; again in 1996; and as late as 1999, we had done a competitive award or competition for berets to a Cabot, Arkansas company called the Bancroft Cap Company, which is the only domestic producer of berets in the United States today.

Bancroft had been doing this for about 20 years. Their production capacity during that period of time was about 6,300 berets a month or about 70,000 a year.

Over the past 10 years, then at least, we have talked to over 50 domestic companies and contractors, trying to find out if anybody

was interested in producing this specific beret for the military services, and none were.

The question you ask is why wouldn't anyone want to do this business. Well, a couple of reasons.

First of all, it takes special machinery to do it. It requires a circular knitted machine, which is really old technology. It was manufactured years ago, mostly overseas in Romania and in France. They are hard to find. There is no new production on these machines. Cabot has the only machines in the United States, somewhere around 60, I think.

They are not dual-use, so you are only going to use them to produce this specific beret. There is not a follow-on application in the commercial marketplace.

And we talked to the vendors. They said it would take 12 to 18 months to set up an operation. It takes a capital investment to do that, takes training. If you look at it from the financial return on investment, there really wasn't a lot of incentive there based on the demand that we had had to produce berets. It is very labor-intensive also.

I have a story board, if you will, to show how the beret is manufactured, to give you a sense of that.

Wool is taken, placed on the circular knitting machine, and produces the shell which you see up in the top corner there. It is then stitched where that seam is so that it becomes a single solid beret.

It is then placed in a machine that basically agitates and produces the material to the look that it has there with the piling and with the single look that it has.

We take it and put it in a vat where it is both dyed and moth-proofed. It is then put on a machine which actually blocks it and gives it the shape that you see in the top left corner there.

Then there is a drawstring, which is attached at the base of the beret, that allows the soldier to tighten it a little bit for sizing, and that is attached on there with a leather band. And then, lastly, there is a stay which is placed behind on the inside of the beret so that the flashing, which is the unit insignia or designation, can be placed on that machine.

Now there were only three known manufacturers at the time—and we have been looking at this at least for the last 11 years—that we knew could produce berets. One was Bancroft, which was the only domestic producer. The other two were overseas, one in Canada, which is Dorothea, which makes the Canadian beret. One was a U.S.-based company out of New York, which is Denmark, which had a subcontractor plant in Romania.

The first thing we did was say, "What if we gave it all to the U.S. to the single source that we had, and what would that mean to the delivery for the Army requirement?"

Quite frankly, at the production rate that Bancroft was able to produce, it would have only provided somewhere in the neighborhood of max capacity of 100,000 a month. It would have taken Bancroft about six years to meet the Army requirements, which would not have been a reasonable period of time for what the Chief of Staff of the Army has talked to you about previously.

So we had to figure out how to get 3.9 million berets in about a five-month period with a follow-on of another sustainment quantity immediately thereafter.

So what we did, basically, is awarded to Bancroft what they said their maximum capacity was, which was 100,000 berets a month. We then directed the award to Denmark and Dorothea for their max capacity, which was 60,000 and 40,000 collectively.

After we had done that, Atlas Headwear came in—and Ms. Goodman will talk to you later today as another member of the panel—and submitted a second beret for the Army to take a look at. I have the two berets here in case you haven't seen those.

Basically, we took that back to the Army. The Requirements Section for the Army took a look at it and said it would not meet the needs of the Army and disapproved the use of that particular beret. So that left us with a requirement and DLA to figure out how to produce the remainder of the berets to the original requirement.

We did a worldwide search up in Philadelphia. We identified 20 potential producers. Five were U.S., 15 were foreign. We asked for requests for proposals. They all sent in samples, we looked at the samples. We reviewed the company records to determine responsibility, quality, quantity, price reasonableness.

Then we had full and open competition, and we made four awards at that point in time. As you can see on the second chart, we awarded two to U.S.-based companies, foreign produced, Northwest Woolens in Rhode Island and Bernard in Florida, and two foreign, which were to the United Kingdom. One was Kangol, and the other was C.W. Headdress.

We were concerned about the child labor laws, so we asked the Defense Contract Management Agency to visit all of the plants both initially, and frequently thereafter, to make sure that they were in compliance with the local child labor laws, and that has been done.

The last thing we did was, in December we actually issued what we call a sources sought advertisement in the Commerce Business Daily, which is where you post procurement requirements, and that is where the bidders come in and take a look at whether they are interested or not to see if we had any further interest because we really did want to try to give this business to domestic sources.

Since that time, we have had 13 telephone or written inquiries from domestic companies. We have had no serious follow-on interest after discussion or receipt with the exception of we have announced that we are going to try to do an Industry Day on the 23rd of May, at which point we, again, are working with small business to try to bring in as many manufacturers and interested parties as we can.

We do have some companies that said they are coming to that, and so we are hopeful that we will be able to craft out of that some sort of strategy which will allow us to work on an industrial base here in the United States.

In regard to small business, as mentioned, we knew the business well. We have been working over the years with our Small Business Procurement Center Representative, and, as late as 1998, we had issued a competitive contract, no set-aside, no restricted procurements because there was only one producer in the United

States. And we have followed that process consistently over the years.

I will tell you, however, when Philadelphia did these awards, these last awards on berets, they did not send the small business coordination record to the Procurement Center Representative, which they should have done, so he was not aware that we had awarded those.

It was an administrative error. The Department had a review conducted by the Small Business Office to determine was this something which is a major flaw in the way that we were doing business in Philadelphia or a one time error.

We went out and randomly pulled about 50 records. They only found one occurrence where that coordination document was not there. We believe that this was simply an oversight as they were trying to quickly meet the needs of the Army. And it would not have changed the facts and circumstances, at least in our minds, with the contract.

The bottom line, we don't know of any violation of any Small Business practices with the exception of that. And, in fact, as I will mention in just a minute, we have a strong record of support to the Small Business community.

Finally, in respect to buying American products, I will tell you that the buying command in Philadelphia, 68 percent of all the clothing and textile dollars that we spent in Fiscal Year 2000 or about \$750 million went to the Small Business community.

Within DLA, 40 percent, which is the highest in DOD of all DLA contracts went to Small Business. That is about \$4 billion. And 90 percent of all of our clothing and textile procurements went to U.S. companies for products made in the U.S. out of U.S. components.

I will tell you that Philadelphia used the sole domestic source to the maximum extent possible, and, only when we saw no other way to meet the requirement for the Army for quality, quantity, and timeliness, did we make the proper determinations of non-availability.

They did have the delegation to waive the Berry Amendments. They followed the spirit and the letter of the law, at least in our mind. We take the Berry Amendment waivers very seriously. In the last 10 years, there are only four instances, that I am aware of, where end items for products were waived out of Philadelphia. And we only did that to get through the initial production and try to get sustainment.

Finally, I will tell you that the Department of Defense did conduct a separate review of our entire acquisition strategy and process. What they found is listed basically up here, and Mr. Oliver can talk more to that than I, but that our procurement was proper, our Small Business practices were intact, and we bought American to the maximum extent possible. I will tell you that at every step of the way, we tried to follow the spirit and the letter of the law.

The last points I would like to make are, over the last two days a couple of other things have happened which I think are important to the Committee.

First of all, the Philadelphia Command terminated three contracts for default, and these are the companies that you saw up there earlier. They happen to be Bernard, North West Woolens,

and Denmark, plus, the Chief of Staff of the Army decision and the Deputy Secretary decision to terminate the contracts—not to terminate, but to not use the China-manufactured berets.

What that, in essence, does is put 2.2 million berets back to us to try to find domestic sources or about \$11 million worth of business which we have the opportunity now to try to craft a strategy to use Small Business. We hope to be able to do that at our 23 May Industry Day.

And the last point I would make is that on the delegation of authority to make waivers of non-availability, that authority has been withdrawn. I think you all saw the release from the Deputy Secretary of Defense this morning.

For me in DLA, that means that the Under Secretary of Defense for Acquisition, Technology, and Logistics, is the only person now that can approve waivers of the Berry Amendment. That no longer resides in the Defense Logistics Agency, and that is true also with the Service Secretary.

Chairman MANZULLO. General, you are three minutes over.

Lieutenant General GLISSON. Mr. Chairman, I stand ready to answer questions.

[Lt. Gen. Glisson's statement may be found in appendix.]

Chairman MANZULLO. Thank you.

I am going to go out of order for a specific reason and call Michele Goodman because I think she has some contradictory statements to you, General.

Lieutenant General GLISSON. Okay.

Chairman MANZULLO. Michele?

**STATEMENT OF MICHELE GOODMAN, PRESIDENT, ATLAS
HEADWEAR, PHOENIX, ARIZONA**

Ms. GOODMAN. Good morning. Thank you for the opportunity to discuss the treatment of small businesses dealing with government procurement policies. I am am particularly grateful—

Chairman MANZULLO. Michele, could you pull it closer—there you are. Thank you.

Ms. GOODMAN. Is that better?

I am particularly grateful for the leadership shown by the members of the Committee on this issue.

My name is Michele Goodman, and I appear here today on behalf of 120 people from Atlas Headwear. This is down from 240 people a year ago. We are located in Phoenix, Arizona, and we are a woman-owned small business, employing mostly Hispanic and other minority women. We also have an aggressive policy towards hiring the developmentally disabled and the physically handicapped.

Over the last five years, Atlas has joined a partnership with a school, habilitation school, to hire those people that, as the chairman pointed out, are defenseless. They have no other means, except through the training they get in the school and through private businesses, to find a place, a place where they can be constructive and a place where they can feel good about themselves.

I will just cite you a couple of examples. We have an employee, her name is Chris. She has been working for us for four years. She

is in a wheelchair, and she has all types of emotional and mental handicaps.

When she first came to our facility four years ago, she had seizures on a regular basis. It was difficult, but Chris learned, and felt welcomed, and she was diligent in her efforts towards trying to make her life better. And she saw that other people that surrounded her were trying to help her do as well.

I can report that now, after four years or even after six months, Chris no longer has seizures. She comes to work every single day, and she does an excellent job, as does Lori and Crete, who happens to be hearing-impaired, Chris, Stephanie, Joseph. And the list goes on of those people.

I will just make one final comment on that. When we had to lay off almost half of our staff over this past year, we made a conscious effort to keep the people that were least able to find a place. And all of the emotionally, developmentally handicapped are still working for us, and they represent five percent of my workforce.

This year we will complete 20 years of manufacturing for the Department of Defense. We currently make the hot weather cap for both the Army and the Air Force for the Defense Supply Center in Philadelphia, known as the DSCP, and the Navy and recruit hat for NEXCOM in Virginia.

We have manufactured in the past the Temperate BDU cap, the Desert Sun hat, and the Marine Corps utility cap. We have commercial work as well, manufacturing for golf, fashion, outdoor products, theme parks, and other industries.

I was asked to speak today about two issues, first, the issue of the Pentagon's decision to waive the Berry Amendment when it decided to purchase berets from foreign sources and, secondly, the larger issue of Pentagon procurement policies.

In the interest of time and because General Shinseki was available to be here today, I would like to focus my oral testimony on the beret issue and leave the other issues to my written testimony.

I would encourage the Committee, however, to read the written statement regarding other procurement issues as I believe they are as important to small business as the beret issue has become.

I submit to you that I was closely involved in the events that took place regarding the beret decision, and my testimony is accurate from a firsthand perspective.

On October 17, 2000, General Shinseki, the Army chief of staff, announced a directive to provide all Army personnel with berets by the Army's 225th birthday. The due date for having the first berets in hand in order to meet the June 14th deadline was April 2000, meaning contracts had to be let quickly, placed for millions of berets with more than a million to be delivered in only five months.

General Shinseki apparently paid little attention to the fact that the task he was ordering had many obstacles before it and should not have been rushed. Quite honestly, we had 225 years to prepare for this.

It was not a surprise situation. Proper planning for this transition could have prevented not only the serious waiver of the Berry Amendment, but also would have prevented excess cost to the U.S. government, the U.S. taxpayers, and us, the small business community.

Normally, when a procurement solicitation is made by the officers of the DSCP, there is a fair and transparent process that takes place where the DSCP works to ensure that not only does the military get quality products at an affordable price and in a timely manner, but that those items are procured from American manufacturers who make up the industrial base that support the military in both war and peace.

These small businesses live and die by the fairness of the process and the people at DSCP who work closely with business to meet this goal. However, in this case, the DSCP was forced to act in a manner that would shut out American manufacturers because they were given an impossible deadline to meet. The lack of planning and foresight exhibited by General Shinseki created this problem.

As a part of my written testimony I have provided a timeline of the key events that occurred from the date the general's decision was announced, and this timeline highlights my company's attempts to be awarded part of the contract.

When General Shinseki gave the beret order, the DLA, Defense Logistics Agency, did not question his decision. It is my understanding that they are not permitted to. The result was that contracts were let in a manner that conflicted with two laws, the Competition in Contracting Act and the Berry Amendment.

The Competition in Contracting Act was violated when two contracts were awarded to two companies even before a public notice was announced that the contracts were open for bidding. When the solicitation for other bids was finally made public, the Berry Amendment was waived within days of the announcement, and the contracts were awarded to foreign manufacturers. Both of these actions shut out potential American manufacturers who could have mobilized to fill the orders.

I have with me a sample beret that I made in my attempt to bid for the contract. I was rejected. I was told, "It doesn't look right." My attempts to work with the Army on designing a beret they could accept were repeatedly ignored.

And I have also brought with me two berets. This is the current beret that they are using. I don't know which beret they showed you of ours.

We have made two attempts, without the help of the Army and their design people, to make a beret very similar to their beret, and it is two-piece stitched. And I am going to tell you that none of you from there can see that, okay. I don't know, the one you have up there could have been the first attempt, but I would be more than happy for you to see those.

I do not believe the Congress created laws such as the Berry Amendment and the Competition in Contracting Act for frivolous purposes. I believe that abusing them is a serious matter. I believe that American companies could have fulfilled the orders had DSCP given enough time to properly proceed and if the Army had been more open-minded.

The question then is, what can be done at this point. As I was prepared to testify a month ago, it was my opinion that these contracts should be carefully reviewed for adherence to specification and delivery requirements.

As the general has testified today, rightfully though, some of those contracts have been cancelled for those exact reasons, which were predicted at the outset.

We cannot recover the last six to seven months, but we are still left with the need for berets. It should be directed that the Army work with domestic manufacturers and equipment companies to explore alternatives to the current requirement for a one-piece knit beret.

The knit beret that the Army has requested is manufactured on machinery that is antiquated and more labor-intense than the more modern equipment used to produce the stitched beret.

The labor requirements for the knitted beret is the main reason that the cost is so high. Additionally, the one-piece beret is going to have to be replaced in the near future because the machinery and the spare parts for the machinery are no longer manufactured.

Forward-thinking countries, such as Italy, are already contemplating this change. They have been perfecting the two-piece beret and could offer assistance in perfecting ours to the Army's liking.

The Army needs to explore other types of headwear that would express the general's wish for unity, excellence, and values. The current decision and the result of this decision, buying from Third World countries at significantly higher prices, do not achieve any of these goals.

An American-made stitched beret would provide the following advantages to the Army. They would provide the Army with a beret for which the manufacturing machinery will be there in decades to come. They will reduce cost, improve the response time, increase quality consistency, and save American jobs and protect the military's warm industrial base of American suppliers.

In closing, I would like to thank all of you for the time you have given me to address the struggles American small businesses have in trying to stay alive. We are not asking the government for a handout, simply a hand up. I would be happy to answer any questions.

[Ms. Goodman's statement may be found in appendix.]

Chairman MANZULLO. Thank you, Michele.

The next witness will be David Cooper. I have granted some latitude to witnesses who have a personal side of the story as opposed to those with an academic. So if you would mind adhering to the five minute rule, Mr. Cooper, please.

STATEMENT OF DAVID COOPER, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GENERAL ACCOUNTING OFFICE

Mr. COOPER. Absolutely. I can do that.

The Army's decision to issue the black berets to all of its forces in just eight months placed—

Chairman MANZULLO. By the way, Mr. Cooper is with the GAO.

Mr. COOPER. Thank you.

The decision to equip the forces with these new black berets in only eight months placed a tremendous burden and enormous demand on the normal contracting process followed in the Department of Defense.

In a very short order, DOD awarded contracts to purchase nearly 5 million black berets. The chart that is being put up now will show the suppliers that were selected and the quantities and unit prices of those contracts.

The total cost there is almost \$30 million, and roughly 75 percent of those berets will be made overseas by foreign sources.

Serious problems have been encountered in this contracting strategy. Deliveries of the berets are falling far short of the contractual requirements. And we have heard earlier that some of the contracts are being terminated. The DOD is also experiencing a lot of quality problems with the fit of the berets, the coloring of the berets, and I think in one case there was an odor from the berets.

And now we found out just yesterday that the Army is going to recall the berets that are made in China and those made with Chinese content and dispose of them.

The key event that drove the process that resulted in this outcome clearly is the urgency that was placed on getting the berets to all the Army forces by the Army's birthday on June 14th of this year.

We have already heard about the actions and strategy that was undertaken to do that. I have spent the entire week looking at nearly 1,500 pages of contract documents and e-mail traffic and studies and so on and so forth. Clearly, this was not a business as usual approach to procuring these berets.

Due to the extremely short time frame for delivery, a number of actions had to be taken to expedite the awards of the contracts. According to the contract documents, the situation was considered to be a "unusual and compelling urgency." The basis for that urgency, again, was the timing of June 14th, and we have already heard a statement read this morning that the documents said the Army will be seriously injured if this action is not taken.

During the process of contracting for the berets, the Small and Disadvantaged Business Utilization Office review was bypassed inadvertently. I don't think there was an intention to do that, but, in the haste to award the contracts, that review was not done.

A recently issued DOD study concluded that such a review wouldn't have made any difference anyway, but I would like to make a point about that. That study accepted the June 14th requirement, and that is the basis for that conclusion in that study.

As another example of the haste, I would like to quote from one of the contract documents.

And this has to do with the contract award to the Canadian firm.

The contracting officer must make immediate awards to attempt to meet the initial fielding requirements of the Army, so there is no time to obtain detailed cost or pricing data, analyze that data, develop a negotiation position, negotiate with a firm, and, then finally, make award.

We looked at some of the competitive awards that occurred after the initial non-competitive situation, and the concern that was raised in some of the documents about the Canadian price being higher than perhaps warranted was borne out because we found that the competitive prices were 27 percent below what that non-competitive price was.

And I would like to now put up a second chart that shows the sequence of events that surround the waiver of the Berry Amend-

ment. To meet the deadline for fielding the berets, DLA determined that sufficient domestic sources were unavailable and that additional contracts needed to be awarded to the foreign firms.

The center in Philadelphia that did the contracting for this procurement prepared three waivers. And the deputy commander at Philadelphia approved the first two waivers on November 1 and December 7.

As the first waiver approval was being processed, questions arose from the headquarters of DLA about whether, in fact, Philadelphia had the authority to waive the Berry Amendment.

In fact, on November 8, DLA senior procurement executive put in a request to the undersecretary of acquisition's office to have a delegation of authority be given to DLA to waive the Berry Amendment. That occurred on February 1, with a delegation of authority to the DLA director and a senior procurement executive but not any further than that.

Let me back up for just a second. Using that delegated authority, the senior procurement executive at DLA went back and reviewed the previously approved waivers and, in fact, ratified the approvals that had been made earlier.

And then, on April 24th, the delegation of authority was pulled back into the Pentagon. So there is a lot of—seems like a lot of confusion on who had the authority to make the waivers.

In summary, Mr. Chairman, the imposition of the June 14th deadline clearly placed DOD in a high risk contracting situation. In their desire to serve the customer, procurement officials were forced to take extraordinary measures to purchase the berets. However, the date allowed very little time to plan for the purchase, as we have just heard, and little room to respond to the problems that had been encountered in deliveries and quality.

In the end, Mr. Chairman, in my view, it is clear that the Army asked the procurement system to do something that it couldn't do. In fact, DOD officials now expect that less than half the Army forces will get the new berets by the June 14th date.

That concludes my statement.

[Mr. Cooper's statement may be found in appendix.]

Chairman MANZULLO. The next witness is John Whitmore, who is the acting director of the SBA.

Mr. Whitmore.

**STATEMENT OF JOHN D. WHITMORE, JR., ACTING
ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION**

Mr. WHITMORE. Thank you, Mr. Chairman and distinguished members. I am John Whitmore, the acting administrator of the Small Business Administration. I appreciate the opportunity to appear today.

Chairman MANZULLO. Could you pull the mike closer to your mouth? Thank you.

Mr. WHITMORE. We are here today to discuss a situation where procedures were not followed. But before I discuss the beret issue, let me explain SBA's role in government contracting.

SBA is responsible for ensuring that America's small businesses receive a fair share of federal government contracts. One of the

agency's responsibilities is to review proposed acquisitions to identify both prime and subcontracting opportunities.

SBA's PCRs will recommend alternative procurement methods when small business contract participation is unlikely due to quantity, dollar value, restrictive delivery dates, or requirements for non-commercial specifications.

If the SBA and the contracting activity disagree regarding the procurement strategy, SBA may appeal to the head of the procuring activity. However, it is important to note in the last five years we have been successful less than 50 percent of the time.

Ordinarily, such acquisitions such as the beret purchase are coordinated with SBA's procurement center representatives. They are located at major buying activities. Their goal is to ensure maximum small business participation.

During the last few years, an increasing amount of PCR's responsibility is involving and evaluating cases of contract bundling. Some positive results of PCR oversight include initiating small business set asides, removing work from consolidated solicitations and including them in the 8(a) program or in the small business set aside program, and ensuring that subcontracting to small businesses is included as an evaluation factor in the solicitation.

In terms of procedure, the PCR and the small and disadvantaged business utilization specialist review the agency's strategy, including the extent to which small businesses will be used. The PCR reviews the procurement strategy to determine the capacity for small businesses to meet the particular requirement.

With regard to the beret acquisition, the procurement was not sent to SBA for review as required by the Federal Acquisition Regulations. Had it been sent to SBA, we could have been effective in suggesting the use of modern machinery, suggesting delivery dates that are in line with developing a domestic supplier pool, and recommending improvements to the commercial item description as envisioned by FAR. In this instance, the commercial item description was 15 pages.

In general, our overall goal is to maintain a significant and meaningful procurement opportunity for small business. Congress has repeatedly acknowledged that participation of small business is vital to the growth of the U.S. economy. More specifically, small business participation and procurement increases competition, diversifies the supplier network, and generates the majority of innovations. It also creates many new jobs.

While the data suggests that the percentage of government contracting dollars to small business has remained relatively constant, the actual number of contracting opportunities is declining.

New contracting opportunities declined almost 50 percent from fiscal year 1995 through fiscal year 1999. Obviously, this reduction has significantly reduced contracting opportunities for small businesses wishing to compete for federal contracts.

This is a classic supply and demand problem. An increasing number of small businesses are interested in a decreasing number of federal contracts. This is a serious obstacle to the growth of America's small business community.

In particular, small businesses are concerned because purchases under \$2,500 are no longer reserved for small firms, and a large percentage of that is going to the large office supply stores.

They are troubled by multiple award contracts, government-wide acquisition contracts that are now used extensively, both limiting small businesses' contracting opportunities. And, as I previously stated, contract bundling continues to be a major impediment to small business.

Free markets thrive on competition. Small and new companies epitomize that competition. The federal marketplace needs small businesses to ensure competition and to provide the taxpayers with the best value for goods and services.

Acquisition reform has had success. However, we must make certain that, in the process, small businesses are not precluded from participating in the federal contracting opportunities.

If we followed procedures in this instance, we would have appealed the Defense Personnel Support Center's decision to buy in this way. Had we appealed this, these questions would have been raised quite a while ago, and we probably would not be here today.

Thank you, and I would be happy to answer any questions.

[Mr. Whitmore's statement may be found in appendix.]

Chairman MANZULLO. Appreciate your testimony.

Mr. Joffe.

**STATEMENT OF EVAN JOFFE, SPRINGFIELD LLC, NEW YORK,
NEW YORK**

Mr. JOFFE. Chairman Manzullo, members of the Committee, I appreciate the opportunity to appear before you today. My name is Evan Joffe. I am the market manager for government and military fabrics for Springfield LLC, a small textile company headquartered in New York with manufacturing in Gaffney, South Carolina.

My full statement has been submitted for the record. However, I would like to summarize some of my points before the Committee today.

A little background on Springfield: we are a small business that employs approximately 370 associates. We manufacture apparel fabrics worn by U.S. Air Force pilots, Army helicopter crews, Navy seamen, and all servicemen in garrison as well as fabrics for civilian, career, and uniform applications.

I am also the immediate past chairman of the Government Textile Procurement Committee for the American Textile Manufacturers Institute, the national trade association for the U.S. textile industry.

First, I would like to applaud the Army chief of staff, General Eric Shinseki, for his efforts to modernize the U.S. Army and bring it into the new millennium. And, also speaking for the entire textile industry, I commend Lieutenant General Henry Glisson of DLA for his partnership with our industry.

From his days as commander at the Defense Personnel Support Center, now known as Defense Supply Center, Philadelphia, where he led the efforts to modernize textile and apparel specifications to his innovations with the best value contracting currently being employed by DLA, our industry had enjoyed a solid working relationship with him and also with the new head of the clothing and tex-

tiles at DSCP, Colonel Diamante, who has continued by reviving the modernization effort. Will be working with him in the fall to get some of the modernization Subcommittees started again.

If it sounds that I am pretty supportive of the military, I am because for people who spin yarn, weave fabrics, manage markets, and executives who lead those businesses, they are a very big customer with a very big open-to-buy. And it is very important for us as we start, because we actually have declined in membership in our industry, to keep what's left here.

So today, my desire is to continue to support this defense supply team and facilitate a closer working relationship between all team members, services, DLA, and the supplier base to keep our forces ahead of the edge.

I would like to emphasize that the partnership between the United States Armed Forces and the domestic textile industry is fundamentally sound. But, like any good relationship, there are always improvements that can be made.

A foundation of this relationship is the Berry-Heffner "Buy American" Amendments. Since World War II, this law has ensured a warm U.S. industrial base for clothing and textiles, and a major component of this base is small business. But the landscape is changing.

Over the past 10 years the U.S. textile and apparel industries combined have lost over 540,000 jobs, and there are new plant closings being announced every week. We have lost over a third of our textile industry. We are now down to about 530,000 in the textile industry. So we have lost, like I said, about 33 percent. However, if it weren't for the Berry-Heffner Amendment, our industrial base would have been eroded even further.

General Henry Shelton, the chairman of the Joint Chiefs of Staff recently spoke at ATMI's annual meeting here in Washington. His undergraduate degree was actually in textile technology.

Referring to the threat posed by chemical and biological weapons to American service personnel and to our industry's efforts to provide protective fabrics and clothing, General Shelton said, "I am thankful that we can continue to call upon the American textile industry to help us meet that threat. You are an indispensable partner of our military forces, improving their prospects for success in future conflicts."

This hearing today was prompted by the U.S. Army's decision to waive the Berry-Heffner Amendment in order to allow the expeditious purchase of black berets in time for the Army's 225th birthday celebration. A more realistic deadline, as we have seen, would have allowed U.S. manufacturers to gear up to produce these items.

In recent years, there has been a trend towards consolidation in all sectors of the defense supply industry, including textiles. As small businesses are acquired by larger companies, these larger companies may not be able to make smaller run but nevertheless crucial items for the military. Therefore, we need to maintain a small business supply sector to provide these vital niche products.

And, as we were talking about a little bit before, I think what we are coming to is a challenge between having a warm industrial

base for our defense purposes as opposed to going into completely commercial procurement strategies.

In conclusion, my message is basically this. U.S. small businesses are a vital part of the military supply chain and must be maintained. And the Berry-Heffner Amendment is important to these small businesses that supply the needs of American armed forces.

I commend the Committee for your support for a reliable defense industrial base which needs to continue to include a strong small business sector.

Thank you for your invitation to appear, and I would welcome any questions you might have.

[Mr. Joffe's statement may be found in appendix.]

Chairman MANZULLO. Thank you very much. Our next witness is Professor Schooner, Associate Professor of Government Contracts Law, George Washington University Law School here in Washington.

Professor.

STATEMENT OF STEVEN L. SCHOONER, ASSOCIATE PROFESSOR OF GOVERNMENT CONTRACTS LAW, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, WASHINGTON, DC

Mr. SCHOONER. Chairman Manzullo, Congressman Velazquez, and members of the Committee, I appreciate the opportunity to appear before you today.

I believe the black beret provides a unique opportunity to consider the role of congressionally mandated policies in the federal procurement process. Procurement statutes and regulations long have required that the procurement system further a broad range of social policies.

In buying black berets, Congress's intent was clear. The military must purchase clothing manufactured in the United States unless the military's needs cannot be met at market prices by domestic manufacturers.

If the military's needs cannot be met in a timely fashion, the statute permits clothing purchases from foreign manufacturers. Thus, the statutory language permits DLA to procure foreign berets if domestic capacity could not produce the berets when needed.

As the Army described its requirement to DLA, the Army needed the berets by a certain date, June 14, 2001, and DLA acted accordingly. Yet, as this Committee has heard, no pending crisis in October 2000 required the Army to obtain millions of berets by June 14th.

Under a strict reading of the relevant statute, this self-created exigency proudly provided sufficient legal justification to permit purchases of foreign berets despite Congress's wishes.

So DLA could procure the foreign berets if domestic capacity would not produce the berets when needed. And if you look at contemporary dictionaries, you'll see that need is defined as a lack or something required or something desirable or something really wanted.

So here the Army wanted a large number of berets rather quickly, and the DLA wanted to fulfill the Army's desires. The statute permits this behavior. But the behavior nonetheless is inconsistent with congressional intent.

The Competition in Contracting Act, which we have already heard about today, requires full and open competition in government procurements and offers a useful analogy here. There are seven statutory exceptions to the Competition in Contracting Act that permit the use of other than competitive procedures.

These exceptions exist because Congress did not intend government business to screech to a halt in the name of competition. But the exceptions are narrowly construed because the acquisition planning process is intended to overcome all but the most compelling urgency situations.

Unusual and compelling circumstances will not be found if the agency is slow to conduct the procurement, and it won't be found where there is a lack of advanced planning. In other words, poor planning which results in compressed time frames or crisis management does not justify avoidance of competitive procedures.

In the classroom I attempt to impress upon my students that, as future lawyers, just because they can get away with something doesn't necessarily mean it is a good idea. This message plays out today in the constantly evolving relationship between program managers and contracting officers.

Program managers, such as, in this case, the Army chief of staff, define requirements based upon missions they are tasked to achieve. Contracting officers attempt to fulfill those requirements.

The message of the 1990s acquisition reform movement was that customer service, pleasing the program manager, merited increased emphasis. Accordingly, DLA bent over backwards to fulfill a need described by the Army.

Now government buyers should have every motive to please their customers. Unfortunately, these customers rarely appreciate the value of congressionally mandated social policies that may delay or deter their ability to obtain needed goods or services.

The not-so-subtle message trumpeted during the 1990s was that it was more important to please the program manager than to adhere to long-standing procurement policies, particularly certain social and economic policies mandated by Congress.

It is not enough for our procurement professionals to focus on satisfying the program manager or the end user. Procurement involves the expenditure of public funds, and the federal government has been and always will be different from the commercial sector.

The federal procurement process need not be slow, ponderous, or inefficient. And, in fact, DLA demonstrated that they can move quickly to meet needs. But no crisis required that the Army obtain these berets quickly. Almanacs and reference books teem with dates commemorating births, achievements, and epochal events.

The arbitrary selection of such a date is not a compelling reason to avoid a congressionally mandated policy. If it were, nothing would stop program managers from routinely mandating delivery of what they ask for by next Friday.

Better acquisition planning or, more specifically, more realistic definition of the Army's actual requirements could have avoided this situation.

Mr. Chairman, that concludes my statement, and I would be pleased to answer any questions you may have.

[Mr. Schooner's statement may be found in appendix.]

Chairman MANZULLO. Thank you, professor.

The next witness is the Honorable David Oliver, Acting Undersecretary of Defense Acquisition, Technology, and Logistics.

Mr. Oliver.

STATEMENT OF HON. DAVID R. OLIVER, ACTING UNDERSECRETARY OF DEFENSE, ACQUISITION, TECHNOLOGY, AND LOGISTICS

Mr. OLIVER. Yes, sir, Mr. Chairman, distinguished members.

Let me sketch this, beginning where I—the office I occupy is in the chain of command because we are talking about this to General Shinseki. We have questioned him a great deal on procurement practices.

There are four offices that report directly to the secretary and deputy secretary of Defense in OSD. I occupy the one responsible for all procurement.

Now, for example, General Glisson then is two levels down from me. And, as General Shinseki said, it is a completely different chain of command, so he is not responsible for procurement.

Now I appreciate why we are all interested in this and it is because the United States Department of Defense spends \$48 billion a year on small businesses, doing business with small businesses. And you would like to increase that amount, as would we.

Let me talk about what I was interested in this issue. I was interested when this came up as to whether or not the people working for General Glisson as well as General Glisson had followed all the rules. So I took the person who was responsible for contracts and some other people, a tough team, put them together and said, "I want you to go review that."

They did that. The results are generally what General Glisson said, which is that they performed, in general, rather well.

The bigger question then becomes should we make some changes. And I have made some changes as a result of this which you may not recognize.

One is I don't think the responsibility for the Berry Amendment waivers should be in Philadelphia, where they are being made by someone who is subjected to lots of different pressures and may not understand why the Berry Amendment is important and also is not a political person responsible to you all directly.

And so, as the general accounting office pointed out, I pulled that back a couple of weeks ago, pulled back all the authority for that to my office, to me.

And the deputy secretary of Defense yesterday directed the services to do the same thing, and he pulled—told them to pull back responsibility for waivers to the Berry Amendment to the Secretary of the Service.

And, in addition, he told them that any time they are going to waive the Berry Amendment, they have to examine all the alternatives, and they have to present the required activity, that is, for example, General Shinseki, with alternatives that would not require a waiver under the Berry Amendment. And then they have to evaluate that, and only after doing so can they waive them. So that is a significant change, and the effort was to make sure that we were reflecting the issues I told you.

Secondly, the question is why, as you may ask, how many waivers do we have—I have reviewed all the Berry Amendment waivers, and there are not very many. But the question is why do you have any.

There is one for a Muslim religious garment, and that may still ride because I am not sure anybody's going to make that. But there are two others that exist. Therefore, "Tom is going to hold an open house in Philadelphia later on this month, and we are going to do our best to do whatever is possible to get American small businesses to make that."

And in Atlantic City the next month we are going to have another open house to see if we can do the same thing for substance providers, essentially fruits and vegetables, et cetera. So we are making every effort to eliminate the need for Berry waivers.

In addition, I have promised some members of the Congress that once we have started the berets, that we will make sure that the berets that are used for subsistence, in other words, the replacement berets—and you need, as Tom has said, about 1.2 million a year—that all those will be produced in the United States.

So we hope this outreach effort will produce significant additional small businesses and will ensure future Army beret procurements will be from domestic sources.

That is all I have, sir, because I don't want to repeat other people's testimony. Thank you.

[Mr. Oliver's statement may be found in appendix.]

Chairman MANZULLO. Thank you very much.

Could you put up the two page memo, the fact sheet there?

All right. Now what that fact sheet says—it is dated October 8, 1996. I can't read it. All right. This is a fact sheet on Army berets that comes from DLA, prepared October 8, 1996. And it states generally that DLA knew what the exact capacity of domestic production of berets were going back to 1996, which means this was nothing new. Is that correct, General Glisson?

Lieutenant General GLISSON. That is correct, Mr. Chairman. We knew as early as 1990, again in 1996, and all the way to present what the domestic capacity was in the United States.

Chairman MANZULLO. So you knew when the order came down you would have to get a foreign requirement.

Lieutenant General GLISSON. When I received the requirement, I knew that I would have to find other sources other than Bancroft, that is correct.

Chairman MANZULLO. Well, you knew you would have to get foreign sources because Bancroft is the only domestic supplier.

Lieutenant General GLISSON. That is correct. But as we do with all contracts, Mr. Chairman, we always go back out to try to make phone calls to see if there is anybody else that we didn't pick up on.

Chairman MANZULLO. Did you ever convey to General Shinseki that you couldn't have the requirement fulfilled domestically by the June date?

Lieutenant General GLISSON. Congressman, I did not. And, if I may take a minute to explain how that communications flow went in terms of this acquisition.

Chairman MANZULLO. Evidently, there were no communications.

Lieutenant General GLISSON. No, sir, that is not true. On an ordinary procurement what would happen is the buying office in Philadelphia would communicate directly with the Army Requirement Command, whoever that is. It would never be elevated above that level.

In this particular case, we actually had three levels going on. Number one, I contacted and maintained direct communication with the Army Deputy Chief of Staff for Logistics, a Lieutenant General, who is my counterpart on the Army staff. He was designated by the Army as the point of contact for the Army on the beret acquisition.

In addition to that, my Senior Enlisted Advisor was working with the Sergeant Major of the Army on the wear of the beret and on distribution. And, below that, the buying command was working with the PM soldier, which is the requirer/generator for the Army.

So we actually had three levels of people working this and communicating on this particular acquisition to make sure we all understood what was going on at any one time.

Chairman MANZULLO. Well, you heard General Shinseki, that he didn't know there could not be domestic requirement until February. You heard him testify to that.

Lieutenant General GLISSON. I did, Congressman. I can't speak to what General Shinseki knew or didn't know. I can only tell you who I dealt with and who my people dealt with during that period of time.

Ms. VELÁZQUEZ. Mr. Chairman, would you yield?

Chairman MANZULLO. Sure.

Ms. VELÁZQUEZ. General, why did you not notify General Shinseki immediately that providing the June 14, 2001, deadline would not allow for a U.S. company to produce those berets here?

Lieutenant General GLISSON. Because I was talking to his Deputy Chief of Staff for Logistics, who is his designated point of contact for the acquisition process.

It would have been extremely unusual for me to step outside the bounds of the Army staff and go directly to the Chief of Staff of the Army on an acquisition issue.

Chairman MANZULLO. So the members of the staff knew, but they never told him?

Lieutenant General GLISSON. Sir, I can't tell you that. I don't know.

Ms. VELÁZQUEZ. This is unbelievable.

Chairman MANZULLO. Did you personally examine the waivers?

Lieutenant General GLISSON. I have.

Chairman MANZULLO. And could you take a look at them and tell me where in the waivers it states that there be sufficient quality?

Lieutenant General GLISSON. Congressman, I would offer the following in regard to quality. I am aware of what the requirement is to waive the Berry Amendment, and it does talk to both quality and quantity.

I would agree with the contracting officer who said, when they looked at the only domestic source that was available, the only product that was available in the United States was Bancroft. Once you had exhausted their maximum capacity—

Chairman MANZULLO. You are not answering my question. That is quantity. Under the law, the waiver must specifically state three things, the necessity to go over seas, the quantity, and the quality.

Lieutenant General GLISSON. Right.

Chairman MANZULLO. Could you show me in these waivers where the quality is discussed?

Lieutenant General GLISSON. Congressman, I cannot because there is no product to which to evaluate quality. You have to have a product to evaluate quality. And once you exhaust what Bancroft has, there is no product to make a quality determination.

Chairman MANZULLO. The product is the beret. Did you ask these foreign firms for samples of the beret and look at them?

Lieutenant General GLISSON. We did, Congressman. We looked at samples from all of the manufacturers who submitted under our request for proposal.

Chairman MANZULLO. Then why didn't you place that in the waivers, the fact that you have examined these berets, and they meet your quality standards?

Lieutenant General GLISSON. Sir, the first thing we did was a technical evaluation to determine quality. Once the quality was determined, then it becomes a quantity and a timing issue.

Chairman MANZULLO. But the quality does not appear in the waivers. The law says—and the professor can back me up—that these waivers must state quality.

Now I understand that some of these waivers relate to contracts on berets that have been cancelled for lack of quality, is that correct?

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. So you didn't do your job.

Lieutenant General GLISSON. Congressman, I think the contracting officer did do their job.

Chairman MANZULLO. Well, wait a second. Wait a second.

Lieutenant General GLISSON. Yes, sir.

Chairman MANZULLO. There is nothing in these waivers to indicate the quality. And then I think just yesterday, on the eve of this hearing, the contract is cancelled for lack of quality. And you are telling me that the contracting officer did his job?

Lieutenant General GLISSON. Congressman, I would tell you that the contracting officer did review quality on each and every contract. The fact that it is not so stated in the waiver, which you are referring to, does not negate the fact that the very first thing that the contracting officer did was look at quality.

Chairman MANZULLO. I understand that. But this is a legal requirement. You have an obligation to review these waivers, isn't that correct, they pass under your hand?

Lieutenant General GLISSON. Sir, I don't have that obligation. I have general counsel who does that.

Chairman MANZULLO. But he works for you.

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. That is correct. So, ultimately, you are the one responsible for these contracts, isn't that correct?

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. And you are familiar with the law?

Lieutenant General GLISSON. Yes, sir, I am.

Chairman MANZULLO. And the law specifically states that quality has been examined. And don't you think that should have been put into the waivers?

Lieutenant General GLISSON. Sir, had that waiver required that piece in there, I would say yes.

Chairman MANZULLO. The law required it.

Lieutenant General GLISSON. Sir, our understanding of the law was what the law required was that we examine quality, quantity, and reasonable price.

Chairman MANZULLO. And that is supposed to be put into the document.

Lieutenant General GLISSON. Sir, I can't speak to whether it needs to be specifically in the document. I know it has to be considered.

Chairman MANZULLO. Well, I would suggest to you, General, that because the law was violated, that the companies that made these berets should not be paid by the United States government because it is their obligation to review all the documents. And this document is insufficient by law. Would you agree with that?

Lieutenant General GLISSON. Congressman, I would not. I have been advised by both Department of Defense counsel and my own counsel that what we did was legal and appropriate and did not violate the law.

Chairman MANZULLO. Well, Professor?

Mr. SCHOONER. As I suggested in my testimony, I guess where I begin on this, Chairman Manzullo, is that it seems like a fair reading of the statute that DLA did not violate the law. And, in fact, my perception coming in was that the major problem here lies in the requirement, not in DLA's actions.

In addition, at least one reasonable way to interpret the statute is that the Berry Amendment requires that, in this case, DLA determine the quality and quantity of domestic manufacture. And so, once we determine, if, in fact, they determine that Bancroft is the only alternative—and I am not going anywhere towards one-piece versus two-piece beret.

Once they make a determination with regard to domestic quality and quantity, and they put—and they make that determination, they have pretty much fulfilled their requirement. And, on my reading, I am not sure that what the statute requires is they make any determination with regard to foreign-produced quantity and quality. The exception deals with domestic quantity and quality.

Chairman MANZULLO. All right. I can appreciate that.

General, these contracts were signed on what dates?

Lieutenant General GLISSON. Congressman, I would have to go back and look. There was one in November, one in December, and another in February.

Chairman MANZULLO. So there were three contracts. One contract was signed November 2nd to Bancroft.

Lieutenant General GLISSON. Right.

Chairman MANZULLO. Another one to Dorothea November 2nd, and the other one was November 6th.

Lieutenant General GLISSON. Right.

Chairman MANZULLO. Now do you know the date that the open solicitation was released?

Lieutenant General GLISSON. Sir, there was no open solicitation for those first three contracts. We waived the CICA requirements because they were the only known source and because of the urgent and compelling—

Chairman MANZULLO. So you didn't even ask if anybody out there could do it.

Lieutenant General GLISSON. Sir, we did not, and that was because we had been looking at this since 1990. We knew the industry.

Chairman MANZULLO. But you didn't ask if anybody out there in the community, in the textile community, had the ability to do it.

Lieutenant General GLISSON. That is correct. Other than we did make phone calls, but we did not do an open competition. That is correct, Congressman.

Chairman MANZULLO. So you did no open competition.

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. With the open competition you would have found out what's available, isn't that correct?

Lieutenant General GLISSON. Congressman, we would have found if we had missed anything, that is correct.

Chairman MANZULLO. Now you thought it insignificant the fact that the SBA representative in Philadelphia made an error in not being contacted, is that correct?

Lieutenant General GLISSON. Congressman, I didn't mean to imply that was insignificant.

What I said was that was an administrative oversight. We require that. We demand that. It was not done. It was something that should have been done.

Chairman MANZULLO. But it wasn't done.

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. Why wasn't it done?

Lieutenant General GLISSON. My guess is that in the haste of trying to meet the Army requirement and do all of these contracting actions, there was simply an oversight.

Chairman MANZULLO. An oversight.

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. Now Mr. Whitmore says that if they had been notified, they could have actually gone to court in order to stop the procurement.

Is that correct, Mr. Whitmore?

Mr. WHITMORE. What I said was we could have appealed this and raised a number of issues. One, if this is a brand new requirement that is going to be going on for a number of years, we certainly would have tried to point out that a domestic supplier should—we should broaden the domestic supplier base. We would also raise a number of questions on a commercial standard, which is supposedly to be able to buy off the shelf, certainly not a 15 page standard.

We also pointed out that the delivery dates and the quantities here certainly were not the right size and scope to be able to deal with small business.

If we are making a major change in what we are buying for the Army head gear, we certainly would try to point out that domestic suppliers, small domestic suppliers, should be involved in this be-

cause there will be follow-on procurements for this type of thing year after year.

If we were to appeal this, Mr. Chairman, and it would have raised it to the highest levels over there, and these questions would have been brought to light very early on in the process.

Chairman MANZULLO. So there would have been another opportunity for domestic requirement?

Mr. WHITMORE. Certainly. And it would also have been raised to the highest levels of the Army, and the questions that were not asked about are they being purchased out of the country, where would they have been done, and what quantities certainly would have been raised. And they would have had to address that very early on.

Chairman MANZULLO. When was the SBA finally notified by the DLA?

Mr. WHITMORE. I am not sure of the exact date, but I think it was three to four months after—

Chairman MANZULLO. March 24th.

Mr. WHITMORE. Right. It was after the awards were already made.

Chairman MANZULLO. After we sent out notice of our hearing and after members of Congress were continually raising hell over the fact that these berets were being made in China, Sri Lanka, Romania, and elsewhere.

Mr. WHITMORE. Yes, sir.

Chairman MANZULLO. I have another question that I wanted to ask, and I will try to be as short as possible, on the line of authority and the chain of command which I find—well, would you give me a minute?

General, were you in charge of supplying the documents to me and Ms. Velázquez pursuant to our subpoena duces tecum?

Lieutenant General GLISSON. I was.

Chairman MANZULLO. I got these yesterday, last night. There must be 400 pages in there. Could you explain to me why it took you until last night to come up again with this latest batch of documents? I haven't even had a chance to read them.

Lieutenant General GLISSON. Congressman, is that the first book or the second book? I don't know which one you have there.

Chairman MANZULLO. Try the fourth book.

Lieutenant General GLISSON. Congressman, that was a follow-on. In your subpoena you told me to continue to provide you with documents as they occurred. And that is what we have tried to do, as those have been developed, to continue to provide those as we put them together.

Chairman MANZULLO. But these documents are dated prior to the date of our subpoena duces tecum.

Lieutenant General GLISSON. Congressman, all I can tell you is, as we locate the documents, as we find them, we try to be as open and honest with the Committee as we can.

Chairman MANZULLO. Do you know what you didn't give us?

Lieutenant General GLISSON. No, sir.

Chairman MANZULLO. You didn't give us General Shinseki's memo that he gave to you six weeks ago that said that he didn't

want to have Chinese procurement. Did you hear him testify to that?

Lieutenant General GLISSON. Congressman, I do not have that document.

Chairman MANZULLO. You don't have that document?

Lieutenant General GLISSON. I do not.

Chairman MANZULLO. Where is it?

Lieutenant General GLISSON. Congressman, I have no idea.

Chairman MANZULLO. I think it is extremely relevant. I mean, that is what this hearing is about. The chief of staff said as long as six weeks ago to your agency that he did not want to have Chinese procurement. And you don't have the document?

Lieutenant General GLISSON. Congressman, I have never seen such a document.

Chairman MANZULLO. You have never seen such a document?

Lieutenant General GLISSON. Have not.

Chairman MANZULLO. Is there anybody on your staff here that has the document?

Lieutenant General GLISSON. Congressman, I don't know of anybody who has seen such a document.

Chairman MANZULLO. I would like you to bring all of your documents relating to this to my congressional office tomorrow, at which time Ms. Velázquez and I can go through everything to see if there are anymore surprises there. I mean, that is a critical document.

Lieutenant General GLISSON. Congressman, I would agree. I have not seen such a document. Obviously, you say one exists. It has not been given to me.

Chairman MANZULLO. General Shinseki says it exists, and I believe him.

Lieutenant General GLISSON. Yes, sir. Congressman, the only document I saw was a release that was made last evening where General Shinseki agreed to not wear the China-manufactured beret.

Chairman MANZULLO. Ms. Velázquez and I sent you a letter April 5th on our Small Business Committee letterhead to your liaison that states,

Pending completion of congressional investigation into the procurement of U.S. Army berets in whole or part from non-domestic U.S. sources, in light of possible violations of federal law and unanswered questions that may seriously undermine the validity of the procurement, we must insist that you suspend any contracts or orders coming from non-domestic U.S. sources.

Do you remember getting that letter?

Lieutenant General GLISSON. I do.

Chairman MANZULLO. Was there any production made in China after April 5th?

Lieutenant General GLISSON. Congressman, there was.

Chairman MANZULLO. Did you ever answer my letter?

Lieutenant General GLISSON. Congressman, I did not.

Chairman MANZULLO. Why?

Lieutenant General GLISSON. For several reasons. Number one, I was under a review at the time which had not been completed by the Department of Defense.

Chairman MANZULLO. I am not part of the Department of Defense. I am the chairman of the Small Business Committee with subpoena powers.

Lieutenant General GLISSON. Sir, I understand.

Chairman MANZULLO. And you did not answer this letter. You knew there was concern. And now General Shinseki said that he sent you a note six weeks ago, and you still continued production in China. Is that correct?

Lieutenant General GLISSON. Sir, I have never seen a note from General Shinseki telling me that.

Chairman MANZULLO. But you saw my letter.

Lieutenant General GLISSON. Sir, I did.

Chairman MANZULLO. And you ignored it.

Lieutenant General GLISSON. I did not ignore it.

Chairman MANZULLO. You didn't answer it.

Lieutenant General GLISSON. Congressman, I did not ignore it even though I didn't answer it.

Chairman MANZULLO. You didn't answer the letter.

Lieutenant General GLISSON. No, sir.

Chairman MANZULLO. Don't you have an obligation to answer letters from members of Congress?

Lieutenant General GLISSON. Sir, I do. The Office of the Secretary of Defense said it was fine—

Chairman MANZULLO. Did he tell you not to answer our letter?

Lieutenant General GLISSON. Sir, the instructions I had were they were trying to gather all of the facts to give you a proper response and that we should not provide an interim until that was concluded.

Chairman MANZULLO. We got no response.

Lieutenant General GLISSON. Right.

Chairman MANZULLO. This Committee got no response, none. And it is apparent that, until the U.S. Congress became active in this situation, you wouldn't have done anything. In fact, Mr. Oliver, what we have got here on this designation of people who have the authority to sign the Berry waiver were all over the place on this.

First, we have somebody at DSC in Philadelphia. Would you put up one of the waivers? There it is right at the bottom there, the one waiver that is dated November 11, 2000, that document right there. Do you see that?

Why don't you put it so Mr. Oliver and the general can see it. That is one of the waivers signed by George Allen. Now who is George Allen?

Lieutenant General GLISSON. George Allen, Mr. Chairman, is the Deputy at the Defense Supply Center in Philadelphia.

Chairman MANZULLO. All right. And then read underneath that date. Read to us what that says. What is typed in underneath and who signed it?

Lieutenant General GLISSON. Sir, on the other side is Mr. William Kenny, who is my Senior Procurement Executive.

Chairman MANZULLO. And what is the date of that?

Lieutenant General GLISSON. The date on that is 23 March 2000.

Chairman MANZULLO. And what does it say?

Lieutenant General GLISSON. I can't see that far.

Ms. VELÁZQUEZ. 2000 or 2001?

Chairman MANZULLO. 2001.

Lieutenant General GLISSON. 2001.

Chairman MANZULLO. And what does it say?

Lieutenant General GLISSON. "Reviewed and approved."

Chairman MANZULLO. Reviewed and approved four months after it was signed.

Lieutenant General GLISSON. Yes, sir.

Chairman MANZULLO. Signed by somebody who had no authority in the first place, is that correct?

Mr. Oliver.

Lieutenant General GLISSON. Not to my understanding, Mr. Chairman. Mr. Allen was serving in the capacity as Acting Commander. And, under the Directive which we have, he had authority to sign that.

What Mr. Kenny did is, when I was given the authority from Mr. Oliver at a later date, what we did is, we went back. I asked Mr. Kenny to take a look at the records and to review to see if there had been any wrongdoing on the part of the Supply Center in Philadelphia in the acquisition strategy. His comment there and his signature indicates he did review those and that he approved what they had done.

Chairman MANZULLO. That he reviewed the contract?

Lieutenant General GLISSON. He did.

Chairman MANZULLO. Or that he is trying to ratify the validity of this?

Lieutenant General GLISSON. No, sir. He reviewed the entire acquisition process and ratified exactly the process that had—

Chairman MANZULLO. Did he sign every single document with that same type of signature?

Lieutenant General GLISSON. No, sir, he did not.

Chairman MANZULLO. But just the waivers?

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. And, General, I mean, it is obvious that whenever there is an investigation of documents, and the documents are shown to be true, the person who did the investigation doesn't sign off on the bottom and say, "This is okay." You don't sign documents in that manner.

Lieutenant General GLISSON. Congressman, what Mr. Kenny was attempting to do was to show that he had reviewed the files, concurred with the actions taken by the Supply Center in Philadelphia. And this happened to be the document that he signed to so ratify.

Chairman MANZULLO. What he was attempting to do was to give retroactive ratification to the document.

Lieutenant General GLISSON. That is not correct, sir.

Mr. OLIVER. He was attempting to follow my guidance, Mr. Chairman.

Chairman MANZULLO. And your guidance was?

Mr. OLIVER. By the way, I had my attorney write down what had happened. They were researching the Berry Amendment for the purpose of drafting language for a potential legislative initiative. And, during the course of the research, they were unable to locate

a copy of the written delegation of DLA for the authority to make determinations. They couldn't find a paper trail.

Chairman MANZULLO. There is no—there is no document on written authority for the Berry Amendment.

Mr. OLIVER. They could not find a paper trail. The people who had been involved told me that for more than 11 years Philadelphia had exercised that waiver authority, and there were certainly indications that people did not think they were doing things dishonestly.

Chairman MANZULLO. This isn't a matter of honesty. It is a matter of competence, chain of command.

Mr. OLIVER. Yes, sir. I understand.

Chairman MANZULLO. And authority.

Mr. OLIVER. So what happens is they said, "We want a letter of delegation." 1 February they came up to me and gave me a draft letter. And, as you can see, because I made pen and ink changes, I was thinking at the time that I did not want to give authority for waiver of the Berry Amendment down further than someone that I knew well. And so I limited it at the time to General Glisson and his procurement executive.

Chairman MANZULLO. That would be somebody down further than the one who had signed it, isn't that correct?

Mr. OLIVER. No. No.

Chairman MANZULLO. George Allen?

Mr. OLIVER. No, he is down further. No, sir.

So what happens, Mr. Chairman, is when we looked at the Berry Amendments—and, first of all, we reviewed all of them to see where they were there—I said to Tom, "Under the new guidance, I would like your procurement executive to go back and re-sign all those if he agrees with them because I would like to find out if——"

Chairman MANZULLO. To re-sign and thus ratify the documents, is that correct?

Mr. OLIVER. Well, the real purpose is to see if there are waivers in force that shouldn't be. In other words, I would like someone more senior to look at that and say that.

Chairman MANZULLO. In other words, to make sure the documents were legal.

Mr. OLIVER. No, to make sure that he agreed with the decisions. My attorneys believe the documents are legal.

Chairman MANZULLO. Wait a second. There is no document showing who had the authority to sign, is that correct, that George Allen had the authority to sign.

Mr. OLIVER. That is correct.

Chairman MANZULLO. Would you agree on that? So he signs. Congress gets involved. We start asking inquiries. We send a letter dated April 5th. There is no authority. There are all kinds of problems. No one answers it. Then, all of a sudden, there is this flurry of activity to find somebody who has the authority to do so.

Mr. OLIVER. The time frame doesn't hold, does it, sir, because in November they came to my office saying that they could not find the paper trail. And I signed that waiver authority on 1 February and was distributed——

Chairman MANZULLO. But why did that take so long?

Mr. OLIVER. A good question, sir, and I can ask——

Chairman MANZULLO. You knew February 1st there was no authority, no signing authority?

Mr. OLIVER. Actually, what I did was I knew there wasn't a piece of paper, and I signed a piece of paper to give them that.

Chairman MANZULLO. But that wasn't until after the person down the line who had no authority or questionable authority had already signed and contracts had been awarded and production started.

Mr. OLIVER. You wouldn't believe this at the time, but we weren't focused on berets at the time, nor did I have any idea that they were doing—this is just a matter of routine. In fact, I have a paper to that effect.

Chairman MANZULLO. This is routine? The authority to waive the Berry Amendment is a matter of routine?

Mr. OLIVER. No. It is a decision. It is not related to the——

Chairman MANZULLO. The statute says that only the secretary or his designee can sign it.

Mr. OLIVER. That is correct.

Chairman MANZULLO. This is not routine. This is authority to sign a contract, to sign a waiver.

Mr. OLIVER. Yes, sir. And I think, in fact, the fact that I marked this letter up and changed it shows that I was thinking about that very carefully.

Chairman MANZULLO. Evidently, thinking about it from November until February.

Mr. OLIVER. It landed on my desk.

Chairman MANZULLO. Ms. Velázquez please.

Ms. VELÁZQUEZ. I regret, Mr. Chairman, that the witnesses were not put under oath. Do you hear me?

Chairman MANZULLO. I am sorry?

Ms. VELÁZQUEZ. I regret the fact that, you know, the witnesses here are not being put under oath.

General, I am going to ask the same question that I asked to General Shinseki. And this is in regard to the justification for other than full and open competition, the comment that was there that says that the Army will be seriously injured if this action is not approved.

He said that he couldn't comment because this was the first time that he saw that. So I guess this is not the first time that you saw that.

Lieutenant General GLISSON. That is not the first time I have seen that. That is correct.

Ms. VELÁZQUEZ. So what is your reaction to that?

Lieutenant General GLISSON. Congresswoman, that the wording leads one to believe that there would be serious harm or damage. And our opinion, based on the requirement from the Army, the chief of staff had said he had an urgent and compelling reason to have these ready in June. I had no reason, nor did any of my people have any reason to question that requirement.

Ms. VELÁZQUEZ. Professor Schooner.

Mr. SCHOONER. Yes.

Ms. VELÁZQUEZ. Would you please comment on that?

Mr. SCHOONER. I guess what I had hoped that my testimony would suggest is that at some point in the process it would be nice if someone asks that question.

One of the most difficult issues that frequently arises in any procurement is the tension between the procurement people, the contracting officers or, in this case, DLA, and the requirement's determiners, the program manager, the people who say, "I want this."

It seems to me that in a good dialogue in a working organization it would be perfectly reasonable for someone at DLA to, as we might say, push back and ask the question, "Is this necessary?"

Similarly, I think it is perfectly reasonable to expect from DLA's perspective that someone in the chief of staff's office, whether they are general counsel's office or some of their staffers, would have already asked those reasonable questions.

But the concern here is that it appears that no one asked the question or, if they did, the question wasn't asked in a manner that it got the attention of the people that realized or would have realized that this was going to be a problem.

Ms. VELÁZQUEZ. Thank you.

General, I am trying to get a handle on the number of berets that you were buying with the Berry Amendment Waiver. My understanding is that the immediate need is for 1.3 million berets so that the June 14th deadline can be met.

Lieutenant General GLISSON. That is correct.

Ms. VELÁZQUEZ. An additional 1.3 berets will be required so that each soldier can have a second beret by October of this year. A third 1.3 million are sustaining berets, meaning that they will be used for new Army personnel and in case berets get torn or damaged in some way.

My question is, this adds up to 3.9 million, and yet you are ordering 4.17 million, an additional 860,000 beyond your immediate need. In fact, it could be argued that your immediate need is only 1.3, isn't it?

Lieutenant General GLISSON. Not quite, Congresswoman. If I may explain what the additional buy is for.

Ms. VELÁZQUEZ. Would you please explain to me why are you using the urgency waiver of the Berry Amendment for all these 4.76 million?

Lieutenant General GLISSON. Yes, ma'am. There are three increments really. The first 1.3 gets to the issue of the first beret to every soldier, another 1.3 to get the second beret issued.

The wear-out rate on a beret is about—you are going to run through those on an annual basis, so if you issue 1.3, you are going to use up 1.3 million berets in a year, so you have to have a replenishment stock for that.

It is not quite so simple in pure numbers because you have size differences and tariffs that you have to meet. So you need additional quantities in order to cover the large number of sizes that you have.

In addition to that, you also have distribution issues that you must consider. These are soldiers stationed around the world, and the issuing sites for these are stationed at various places. So you have to have quantities of sizes at all of these places.

And then the third part of this is that you have to offer sale of these items into the Army/Air Force Exchange for soldiers who lose them and/or somehow damage them, and it is their own fault, that they have an opportunity then to either go buy, or someone else can go buy those.

That total requirement adds up to about 4.8. They are all part and parcel of the same requirement document that we had received from——

Ms. VELÁZQUEZ. General?

Lieutenant General GLISSON. Yes, ma'am.

Ms. VELÁZQUEZ. The rationale to use the waiver——

Lieutenant General GLISSON. Yes, ma'am.

Ms. VELÁZQUEZ. It was that you needed them to be ready by June 14th.

Lieutenant General GLISSON. That is correct.

Ms. VELÁZQUEZ. Did you need all of them, 4.76 million by June 14th?

Lieutenant General GLISSON. I did not.

Ms. VELÁZQUEZ. Thank you.

Ms. GOODMAN, I find it really ironic that your business was awarded an Innovative Business Partner Award by the DLA and, in fact, by General Glisson, and yet the DLA did not want to consider your innovation to the beret to make a more updated product. How do you respond to that?

Ms. GOODMAN. Well, it is my understanding that the Army has the final decision on what the beret looks like, not DLA. So I am not sure that that really holds true that DLA didn't want to. But I find it ironic though that they are the buying activity for the Army, and the Army still refuses to look at that.

I did want to add something though, if I may on what you were talking about the waiver.

Ms. VELÁZQUEZ. Mm-hmm.

Ms. GOODMAN. Atlas, at a cost of \$20,000 in legal expenses, on November 24th, as outlined in my timeline, filed a protest exactly based on what you just brought up, the fact that there was a known quantity. And this protest originally was filed with the GAO.

But, however, on December 7th, the DLA issued an authorization for contract award and performance notwithstanding a protest. And in that they basically said that they couldn't wait for the GAO's decision on my protest, so they awarded the contracts. So they were aware of that.

Additionally, when they did that, I turned around and filed an injunctive action in the Court of Federal Claims, challenging the awards based on both the violation of the CICA, the Competition in Contracting Act, and the Berry Amendment.

Ms. VELÁZQUEZ. Thank you, Ms. Goodman.

Mr. David Oliver, I am happy to see you again. Now that you have admitted, and you said that you have pulled the Berry Amendment waiver authority back to your office from Philadelphia, my question is, would you have approved these Berry Amendment waivers for the beret procurements?

Mr. OLIVER. I don't know, Congresswoman. It is really hard to say in retrospect and for all the reasons that we have talked about.

What we tried to set up with new guidance that went out is that you have to evaluate the alternatives. And you essentially do a three step process to determine if there is somebody who will come in, and then you go back with the alternatives. For example——

Ms. VELÁZQUEZ. Mr. Oliver, excuse me.

Mr. OLIVER. I don't know the answer to that.

Ms. VELÁZQUEZ. With all this time, and you don't have an opinion of this?

Mr. OLIVER. Yes, ma'am.

Ms. VELÁZQUEZ. You didn't have time to evaluate this?

Mr. OLIVER. No. I think it is very complicated because of what the chief of staff said about he actually needs the berets, and there are really good reasons that he made that decision whether or not everyone agrees. And he wanted the berets, and he wanted to buy them for what I happen to think are tremendously important reasons to the integrity of the Army.

Then the question becomes, should we do a different design than the other berets in the world—and these are fighting berets—or should we do this different design. I don't know the answer because we didn't go through that process. So I am giving you an honest answer. I don't know the answer.

Ms. VELÁZQUEZ. Mr. Oliver, I would like to ask you a question that is related to procurement but not to the beret procurement.

Mr. OLIVER. Yes, ma'am.

Ms. VELÁZQUEZ. Would you please read the highlighted portion of the letter that you sent to Chairman John Warner?

Mr. OLIVER. "I believe strongly the department must remain the final authority on how to structure its procurements as it is in other matters that relate to the accomplishment of its mission," a letter of November 17, 2000, having to do with bundling.

Ms. VELÁZQUEZ. Correct.

It appears, Mr. Oliver, from your statement in this letter to Senator Warner that you do not believe that Congress has jurisdiction over Defense procurement matters as they relate to small businesses.

Mr. OLIVER. Absolutely not. You certainly have jurisdiction, and that is the reason I am here. I mean, all I said in this case is I don't think you should change rules on bundling. It is just, as in the Berry Amendment, I was trying to tighten bundling up to change things so you would not have to change the law so we could remain responsive to the soldier.

We went to Desert Storm. They had to go out and do a Berry waiver to provide tents so the Army had enough tents to actually fight the war. Now the Army did not buy them in the end, but they needed to be prepared.

I don't want to set up situations in which you have something like the berets. We want to fix those problems so we don't make war-fighting problems.

Ms. VELÁZQUEZ. You want to fix. I am going to give you some numbers so that you realize that you haven't fixed. And let me just say this to you. As I said it before when you came before our Committee, you know, when the Department of Defense misplaces small businesses whom we all know are the primary employers in

this country, this Committee is going to have and to tell you what to do.

When the numbers of contracts to small businesses are decreasing by nearly 35 percent over the past three years, and the department is telling us that purchasing berets is urgent and implies that national security is at stake, this Committee is going to tell you what to do.

I have seen nothing from your agency so far that leads me to believe that you care even the slightest bit about small business participation in Department of Defense contracts. This is even confirmed by the LMIS study.

I want for you to tell me, Mr. Oliver, don't you think that if a contract bundle doesn't show cost savings, it should be unbundled?

Mr. OLIVER. I think, as you know, that you should not do a bundling unless you can think that you are going to get a cost savings.

Ms. VELÁZQUEZ. General Glisson, I believe that the reason contract bundling as well as the beret procurement are problematic is because the underlying procurement processes within the DOD are flawed. Because of this, this Committee is going to stay and deal with this until these laws are corrected. In light of this, can you tell me, General, has the DLA set an 8(a) program goal?

Lieutenant General GLISSON. We have.

Ms. VELÁZQUEZ. What goal have you set?

Lieutenant General GLISSON. I don't recall the number right now. I don't know the answer to that, Congresswoman. I will have to provide it for the record.

Ms. VELÁZQUEZ. You knew that we would be discussing today procurement processes in the DOD.

Lieutenant General GLISSON. I did. I did.

Ms. VELÁZQUEZ. And you come here, and you are not prepared to answer that question?

Lieutenant General GLISSON. I cannot.

Ms. VELÁZQUEZ. So, Mr. Chairman, I will request from the general to submit a written answer to my question, to that and other questions that I will be submitting to you—

Chairman MANZULLO. I think the general stated that he is willing to do that. Ms. Velázquez, the procurement is a little bit different than 8(a) here. We are dealing with this particular situation. I will give you plenty of latitude, but just keep that in mind.

Ms. VELÁZQUEZ. General Glisson, how many hours of training do contracting officers in your command receive regarding the Berry Amendment?

Lieutenant General GLISSON. They don't take specific classes on Berry Amendment. It is part of the overall acquisition training which all contracting officers receive. It varies at what level they are and how much training and experience they have had.

Ms. VELÁZQUEZ. General, are you aware that in 1998 DOD's inspector general report said that 59 percent of contracts issued in fiscal year 1996 and '97 did not include the proper contract clauses?

Lieutenant General GLISSON. I am, Congresswoman. I would also point out though that that report highlighted the military services and did not include the Defense Logistics Agency.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Lieutenant General GLISSON. So I would like to be careful that we are not included in those numbers.

Chairman MANZULLO. Would you yield on that?

Ms. VELÁZQUEZ. Sure.

Chairman MANZULLO. I just have to put this in general. This is a summary of recommendations by the Office of Inspector General, dated October 29, 1998. "Summary of Recommendations. We recommend the director Defense procurement——"

Lieutenant General GLISSON. That is not me, Congressman.

Chairman MANZULLO [continuing]. "Issue guidance, emphasize the requirements to incorporate and enforce the Buy American Act and Berry Amendment provisions and clauses and solicitations and contracts for clothing and related items. The guidance should also remind contracting officers, when they procure incidental non-federal supply schedule items, that they should verify that the procurement complies with the Buy American Act.

"We recommend that the Deputy Undersecretary of Defense Acquisition Reform ensure that the Defense Acquisition University stress the ramifications of not buying with the Buy American Act."

The Deputy Undersecretary of Defense for Acquisition Reform——

Mr. OLIVER. Works for me.

Chairman MANZULLO. Did he ever institute this report?

Mr. OLIVER. Yes, she did. Yes, she did. On 30 September 1998 she got a report back from the Defense——

Chairman MANZULLO. Which would have been two months before this report was issued.

Mr. OLIVER. What happens is, when the report is issued, of course, as you know, you pass these things around, and, if people are really doing their job, they, of course, take action before it even comes out if they agree with it.

Chairman MANZULLO. If they had been doing their job, we would have had the written authority.

Mr. OLIVER. Mr. Chairman, the answer to your question is yes, they did issue the guidance, and it is taught at the school, sir.

Chairman MANZULLO. Who are the contracting officers referred to in this? Are they the ones that work with DLA?

Mr. OLIVER. All the contracting officers.

Chairman MANZULLO. It says, "Additional instructions should emphasize the important responsibility that contracting officers have to incorporate and enforce the Buy American Act."

Mr. OLIVER. Yes, sir.

Chairman MANZULLO. The Berry Amendment Act.

Why don't you finish with——

Ms. VELÁZQUEZ. I am finished with my questions, Mr. Chairman.

Chairman MANZULLO. Okay.

Then Mr. Bartlett? I am sorry.

Mr. BARTLETT. Thank you very much.

Mr. Oliver and General Glisson, can I assume that you now have an appreciation of the intensity of the commitment of our Committee to protect small business interests?

Lieutenant General GLISSON. Absolutely, Congressman.

Mr. OLIVER. Yes, sir.

Mr. BARTLETT. Okay. We don't need to pursue that any further. You understand that we take our responsibility very seriously.

Mr. Oliver, who first became aware that there was not a defensible paper trail for the waivers that were made on November 1 and December 7, and when did that happen?

Mr. OLIVER. Let me read this. It doesn't say. It says they were "unable to locate a copy of the written delegation to DLA of the authority. The DLA federal regulations supplement, however, for many years has provided delegations of authority, et cetera."

Since they couldn't do it in November 2000, it says the acquisition procurement executive of DLA submitted a formal request. It doesn't say who it was.

Mr. COOPER. Mr. Bartlett, I think I can answer your question more specifically.

Mr. BARTLETT. Yes, sir.

Mr. COOPER. I looked at the e-mail traffic that surrounded all this. And I think it was on November 2nd that the question was raised by DLA headquarters about whether Philadelphia had the authority. That is where it started. And then on November 8th the request letter was sent to Mr. Oliver's office.

Mr. BARTLETT. What sort of paper trail is there for this delegation of authority? The statute gives that authority to only two individuals, is that correct?

Mr. OLIVER. The Secretary of Defense and the military service secretaries, sir.

Mr. BARTLETT. Or their designee.

Mr. OLIVER. Right.

Mr. BARTLETT. Okay. So that is two levels of—okay, Secretary of Defense or—

Mr. OLIVER. My lawyers tell me it is to whomever that is delegated down, sir.

Mr. BARTLETT. When was this delegated to Philadelphia? Is there a paper trail for that, or was this just an assumption that was made in the past?

Mr. OLIVER. That is what I am saying. The people could not find the paper trail. When they looked back, they knew it had been assumed for at least 11 years, but they could not find a paper trail, which is the reason they asked me to provide that. Now I chose, as you know, not to delegate it to Philadelphia.

Mr. BARTLETT. Understand. The next question I want to ask is one that just would appear there ought to be a reasonable answer to. Somebody must have asked themselves did General Shinseki really want these berets that bad.

Somebody should have told him, "General, I am not sure that the juice is worth the squeezing here. If you are going to get those berets by June 14th, you are going to have to procure a whole bunch of them outside the country, and a bunch of those are going to be made in China. General, is that really what you want?" Now it is incomprehensible to me that somebody didn't have those thoughts.

Mr. Oliver, do we have such a structured system that nobody down the line could raise that question? I think General Shinseki was very honest when he told us that he didn't know they were being procured overseas. He didn't know they were being procured in China. But somebody sure as heck knew that.

Mr. OLIVER. I am sure he didn't. And, as General Glisson has told you, he was informing people at the three-star level in the Army and General Glisson's staff at the senior enlisted E-9 level and also through some other—in other words, I don't know where that broke down, sir.

Mr. BARTLETT. But you don't think that there were more than one person who wondered whether or not this was a wise course of action to be procuring berets from overseas and particularly from communist China, that our military people, when they took that off their heads, were going to see a "Made in China" on it, and that was going to be a problem?

What I am looking for is a way of providing an open door. I worked at IBM for eight years. We had an open door policy. If I had a serious enough question, I could go to Tom Watson himself.

Mr. OLIVER. Right.

Mr. BARTLETT. And there would be no recriminations for that. Can we have kind of an open door policy so when something—and this was dumb. I think, looking back on this, procuring these things overseas and from China was dumb. And I think that General Shinseki would have said, "Yeah, let us not do that."

But, apparently, the system did not permit that several people who must have had that question in their mind—because we don't have a bunch of dummies in procurement. And several people must have had that question in their mind, and the structure of the system did not permit them to voice that, is that correct?

Mr. OLIVER. Yeah. And when Alan did the review for me, a whole bunch of e-mails came up of conversations, and you could see that people were doing that. And it obviously didn't get up to General Shinseki, didn't get to me. That is my thought on pulling back the waiver authority to me, that it will have to get up to me then.

You know, if I am aware of each of the waivers that are made and become the decision authority, then, obviously, people bring their thoughts and complaints to me. So I agree that is what happened. That is my fix to it.

Mr. BARTLETT. I have a concern about a chain of command that is so rigidly adhered to that if one person—and I can understand that any one person may not have had this question in his mind because he may not have had all the information.

But a chain of command that prohibits this kind of concern from coming up so that it gets to you or General Shinseki, if it had gotten to anybody at a responsible level, I think that the plug would have been pulled on this a long time ago, wouldn't it?

Mr. OLIVER. Well, we certainly have cancelled some contracts and cancelled some other things and spent a great deal of time on this, sir, since we became aware of it.

Mr. BARTLETT. But that was only when the fire was burning pretty hot, wasn't it?

Mr. OLIVER. Yes, sir.

Mr. BARTLETT. Can we do something so that this kind of thing in the future doesn't happen because we have a system which permits people, at whatever level they are, if they have a real serious concern, an anonymous suggestion box or something?

Mr. OLIVER. Yes, sir.

Mr. BARTLETT. "Hey, Chief, this is dumb." Can't we have some way so that this kind of thing won't happen again because I am certain there were a whole bunch of people out there—e-mails verify that—that had some serious concerns about whether the juice was going to be worth the squeezing in this operation.

Mr. OLIVER. Yes, sir.

Mr. BARTLETT. Well, we would like a report, I think, as to how you might implement such a system so that we can avoid this in the future.

Mr. OLIVER. I will give you one. I will give you one, sir.

Chairman MANZULLO. If you would yield, it is pretty simple. The head of DLA just calls the man who made the orders. That is how simple it is.

Mr. OLIVER. It is even more simple now because, since it has to come up to me, I can do this. I mean, do you understand? What I am doing is I am taking the responsibility up to the political appointee who is confirmed by you all who has to answer to you.

Chairman MANZULLO. You took direct action on that.

Mr. Pascrell.

Mr. PASCRELL. This is a civics lesson. It really is. Of course, it may not rise to the level of \$700 hammers, but the more we talk, it is getting there.

The only document that we have from Walter Holten, who is colonel of the infantry, a memorandum he sent to Paul Diamante, Director of Clothing and Textiles, Defense Supply Center Philadelphia.

This is the order for, when you add it all up, first requirement for 1.3 million berets to be available on the April 14, 2001. The berets would be issued to how many active soldiers, how many reserve National Guard soldiers. The additional quantity required is for an appropriate size tariff for the force. Now this went November the 1st.

Now these are followed by three contract actions. And if I listened to Mr. Cooper correctly—correct me if I am wrong, Mr. Cooper—you say on page one of your testimony that the first three contract actions in November 2000 were taken by DLA without providing for full and open competition as required by the Competition in Contracting Act of 1984. You stand by that statement?

Mr. COOPER. That is correct. Yes, sir.

Mr. PASCRELL. And what do you think of that statement, General?

Lieutenant General GLISSON. That is an accurate statement, Congressman.

Mr. PASCRELL. That is an accurate statement.

Lieutenant General GLISSON. Yes, sir.

Mr. PASCRELL. That is what he said.

All right, the second point, the quality of work. We have had a review of what's been already produced, and the quality of work is not up to standard. That is interesting. And it would seem to me that because of expediency we have not only changed what is law or not regarded it, but the results of that have been a product that is not acceptable. Now who is going to eat that?

Mr. OLIVER. They are. That is one of the key things perhaps that I meant to bring up when they were talking about earlier because

she asked someone else. You have to realize that the quality that is not accepted is not paid for. And the United States government is not bearing that, the company has to eat it.

Mr. PASCRELL. So we don't have to worry about that?

Mr. OLIVER. Absolutely do not at all.

Mr. PASCRELL. The company has agreed.

Mr. OLIVER. It doesn't matter whether they agree.

Mr. PASCRELL. Oh, it doesn't?

Mr. OLIVER. They don't get the money.

Mr. PASCRELL. Well, that leads me back to the general's question. You were starting to get into the conditions that you reviewed in factories where these are going to be produced, and I am particularly interested in that.

And I realize that there are 3,000 sweatshops in the city of New York itself where people work 120 hours a week. You said that there were no child labor laws being broken in any of these factories where these berets would be produced. I think you said that.

Lieutenant General GLISSON. Congressman, I think what I said is I asked the Defense Contract Management Agency to visit these plants and make frequent visits to ensure that they complied with local child labor laws.

Mr. PASCRELL. The local child labor laws?

Lieutenant General GLISSON. That is correct.

Mr. PASCRELL. You mean in the country that the factories existed in?

Lieutenant General GLISSON. Congressman that is correct. And we had taken their local labor laws and compared them to our own. And what we found is they met the minimum standards that we would ask in this country.

Mr. PASCRELL. Do you know where the berets were manufactured in China?

Lieutenant General GLISSON. Yes, sir, I do.

Mr. PASCRELL. Do you have a list of those?

Lieutenant General GLISSON. Sir, there is only one manufacturing plant in China.

Mr. PASCRELL. And who visited this particular factory?

Lieutenant General GLISSON. The Defense Contract Management Agency sent a representative there, and they have made a visit since then.

Mr. PASCRELL. Can you tell us what wages were paid at these factories?

Lieutenant General GLISSON. I cannot.

Mr. PASCRELL. Could you tell us whether there was any overtime involved in these factories?

Lieutenant General GLISSON. I cannot, Congressman.

Mr. PASCRELL. We have a Kathy Lee syndrome here. Nobody knows where anything is done.

Lieutenant General GLISSON. Sir, the Contract Management Agency can give you those numbers. I just don't know what they are because that is what they do for a living.

Mr. PASCRELL. Well, we request through the chair those numbers to see where these berets were being made, whether it be China or any other foreign country.

Chairman MANZULLO. I would like to have a list of where every beret has been made, the city, the company, how much money was paid on each contract, and the date that each was made, especially any payments made after April 5th.

Lieutenant General GLISSON. Okay.

Chairman MANZULLO. The date which you got the letter which you refused to answer to this date.

Lieutenant General GLISSON. Okay.

Mr. PASCRELL. You say, General, that only 10 percent of the garments made for our men and women in the forces that protect us every day are made overseas, is that correct?

Lieutenant General GLISSON. That is not exactly what I said, Congressman. I think what I said was 90 percent are made by U.S. companies, with U.S. products in the United States, which means there are 10 percent that are not fully total U.S. components.

Mr. PASCRELL. Well, could you have a list of those products that are made outside of this country?

Lieutenant General GLISSON. I would have to—

Mr. PASCRELL. Now I am saying can you provide for this Committee all of those items that are manufactured for our armed forces, the people who defend us day in and day out.

Lieutenant General GLISSON. Right.

Mr. PASCRELL. I am not talking about any armament. I am talking about the very uniforms that they wear, from fatigues, hats, boots. Ninety percent of that is made in the United States of America, you are telling us today.

Lieutenant General GLISSON. That is correct.

Mr. PASCRELL. So I want to know what about the 10 percent.

Lieutenant General GLISSON. I can provide that, Congressman.

Mr. PASCRELL. And would you do that for the Committee and have that as soon as possible? We would like to review that to see what other things we could discover, Mr. Chairman, that we don't know anything about.

Lieutenant General GLISSON. I certainly will.

Mr. PASCRELL. I am sorry. Go ahead.

Chairman MANZULLO. For the record, we are requesting that you furnish us the letter stating the location of manufacture of all items furnished to the DLA that are not made in this country.

Lieutenant General GLISSON. I understand, Congressman.

Chairman MANZULLO. Okay. And then we will probably have follow-up letters from that, which I trust you will answer, unlike my April 5th letter, which has still not been answered.

Lieutenant General GLISSON. I will, Congressman.

Mr. PASCRELL. Mr. Chairman, there has obviously been an avoidance of competitive bidding here. I mean, it is clear. And I would like the Committee to reserve through you, the chair and ranking member, the ability to bring folks back here under oath to discuss the question of bidding and to discuss the question of how, through avoidance, how we have avoided competitive bidding in not only this particular matter, but any other matter.

Chairman MANZULLO. I don't know about the issue of under oath, but let me put it this way. Every member of the Committee will have 21 days within which to submit questions. And if we

don't get responses within 14 days, I will very seriously consider another round of subpoenas plus the people testifying under oath.

Mr. PASCRELL. Well, I think, Mr. Chairman, that the question of without providing for a "full and open competition", again, Mr. Cooper, I think is devastating, I think needs thorough examination. And it is not very different than what members from both sides of the aisle have said in the last four years in this Committee on various occasions beyond the subject of putting contracts together, simply understanding the bidding process and the competitive nature or the lack of it.

And we are not going to accept that. I can say that, and most of the members of this Committee could say I voted for the four defense budgets that I had to vote for since being here. So I unequivocally support the military.

But we are not going to accept what we have heard today. And it is got to go beyond this Committee. The American people aren't going to accept it. And for us to be a blink and a wink with the Chinese authorities and then give them contracts that our armed forces will be using is an insult to every man and woman in the armed forces. There is no question about it.

Morale? You are talking about the boosting of morale when you take off the hat made in China? Tell me how that works. Tell me what I am missing, General, please. I will listen. I sympathize and I respect your position. I respect you as a person. Tell me what I am missing when I say that. You tell me.

Lieutenant General GLISSON. Congressman, I can't tell you on the wear of the beret. That is an Army decision. I can only tell you that we told the Army. We were very vocal with the Army on where we would have to buy these berets in order to meet the requirement.

I can tell you that I feel like we did that at the appropriate levels and that we thought we were acting in the spirit of the law and in the procurement practices.

Chairman MANZULLO. Would you yield?

Mr. PASCRELL. Sure.

Chairman MANZULLO. Do you have documents to that effect? Did you put anything in writing to those individuals?

Lieutenant General GLISSON. Sir, we have memoranda from both meetings, and we have other memorandums which they produced which so indicate.

Chairman MANZULLO. Those were not furnished to us either.

Lieutenant General GLISSON. Sir, they should have been in book one. If they are not, I can—

Chairman MANZULLO. Should have been, would have been.

Lieutenant General GLISSON. I will check, sir. They should have been there.

Chairman MANZULLO. I am sorry. We do have them.

Lieutenant General GLISSON. Yes, sir.

Chairman MANZULLO. I apologize.

Ms. Christian-Christensen?

Ms. CHRISTIAN-CHRISTENSEN. Thank you, Mr. Chairman.

I apologize for having to step out, and I understand from speaking to staff that many of the questions that I would have asked have been answered.

But I would like to just run the risk of asking this if it has been asked already on the Berry Amendment and the confusion that we saw in the chart as to who had the ability to waive and not waive and the fact that it was waived. I direct my question to Professor Schooner.

Mr. SCHOONER. Schooner.

Ms. CHRISTIAN-CHRISTENSEN. Schooner. And you may have answered it already. You indicated in your testimony that, because the standard that might have been used would have been what someone wanted to happen and that it still fell within the purview of that amendment.

Is there a way in which that amendment should be strengthened to tighten up the language to preclude the possibility of waiving the use of companies in the U.S. to just make it stronger?

Mr. SCHOONER. I think that is an interesting question, Congresswoman. The language itself, I think, is actually reasonably good. What the language basically says is that no part of the appropriation shall be available for the procurement of an article, so it is very broad, basically, unless it is produced in the United States. And then the exception is unless it cannot be procured as and when needed at United States market prices.

As I suggested in my testimony, the problem that you have from a semantical standpoint is the word "needed," I think, many of us would suggest has been diluted over the last generation. I think that if we compared, for example, Webster's I versus Webster's II versus the more contemporary dictionaries, what some of us think the word "need" means might have something closer to a definition like requisite as opposed to want.

Unfortunately, from your perspective, I think the frustration is that, under a dictionary definition, need, in contemporary American usage, means want. And the Army wanted it.

And I think that while they may or may not win in the court of law, I think that that is a perfectly defensible position and one that would have a pretty good chance of success, given the contemporary meaning of the word.

Ms. CHRISTIAN-CHRISTENSEN. Did anyone else want to answer that question? Okay.

Mr. JOFFE. Yes, if I may.

Ms. CHRISTIAN-CHRISTENSEN. Sure.

Mr. JOFFE. Excuse me, Michele. Please go ahead.

Ms. GOODMAN. Well, excuse me. Because we filed a suit that dealt with this issue, I believe that the exception though says clearly, Professor, that the need cannot have arisen out of a lack of proper planning. And I believe that in this instance that is the key thing. We all, I think, can agree that there was a lack of proper planning.

So I would ask the professor to verify that. I think that is part of the statute.

Mr. SCHOONER. As I suggested earlier in my testimony, the best analogy here, being the Competition in Contracting Act, suggests that poor planning or crisis management isn't a legitimate exception.

I think, in terms of the actual words of the Berry Amendment though, your escape hatch that I think is available to DOD here

is the "as needed" language. But I think the point that she is made is a valid one.

Mr. JOFFE. There is also in the House right now, House of Representatives Bill 1458 to strengthen that.

Ms. CHRISTIAN-CHRISTENSEN. Yes.

Mr. JOFFE. And it says to limit the exceptions to certain Buy American requirements and to expand such requirements. So that is already, I think, being worked on right now by the Committee on Armed Services.

Ms. CHRISTIAN-CHRISTENSEN. Okay. One of the reasons that DOD is here and will probably pretty assuredly be back again is because there—we found that there are many obstacles to small businesses participating in contracting with the department.

We have a businesslady here with us today, Ms. Goodman, who attempted to appeal her beret procurement, and yet she was found not to have "standing," as her company was not capable of producing one piece berets.

Mr. Cooper, I direct this question to you. Could you help us understand the concept of standing as it applies to procurement?

Mr. COOPER. Well, that is more of a legal term.

Ms. CHRISTIAN-CHRISTENSEN. Okay.

Mr. COOPER. But I can, I think, get at what you are after. This whole issue and the reason we are all here today trying to explain this—and it is difficult to explain.

Ms. CHRISTIAN-CHRISTENSEN. Yes, it is.

Mr. COOPER. It goes back not just to the contracting people that took the actions, it goes back to the requirement that was established. Once the requirement was established to have these berets by June 14th and only a one-piece beret, all the normal contracting processes went out the window. That is what drove this situation simply.

Ms. CHRISTIAN-CHRISTENSEN. Well, I don't have any further questions, Mr. Chairman.

As I said, I did have to step out, and I am sure most of the questions have been asked.

Chairman MANZULLO. Appreciate that.

I have a couple of questions. Thank you.

General Glisson, who specifically told you not to answer the letter of April 5th that was signed by Ms. Velázquez and me?

Lieutenant General GLISSON. Sir, the decision came from the Office of the Secretary of Defense Public Affairs. They had been inundated, as I understand, with many letters. They knew the investigation was on. They were trying to gather the right information in order to make the response to you.

Chairman MANZULLO. The Office of Public Affairs?

Lieutenant General GLISSON. Yes, sir. Congressional liaison, yes, sir.

Chairman MANZULLO. Who sent it there, you did?

Lieutenant General GLISSON. Pardon me, sir? Sir, they had recalled all documents which had been sent to us in writing. Those were to be consolidated and tried to be answered out of the Office of the Secretary of Defense.

Chairman MANZULLO. I think maybe somebody consolidated them and put them in a shredder.

Lieutenant General GLISSON. Congressman, I don't know the answer to that.

Chairman MANZULLO. I mean, you knew why you were coming here today.

Lieutenant General GLISSON. I did.

Chairman MANZULLO. Is that correct?

Lieutenant General GLISSON. I did.

Chairman MANZULLO. I mean, you knew you were aware that you didn't answer this April 5th letter.

Lieutenant General GLISSON. Congressman, I am.

Chairman MANZULLO. Were you aware of the fact that money had been paid to vendors after April 5th?

Lieutenant General GLISSON. I am.

Chairman MANZULLO. Who wrote the check?

Lieutenant General GLISSON. The Department of Defense probably. We obligated that one to the Defense Contract Management Agency.

Chairman MANZULLO. Who authorized the writing of the check?

Lieutenant General GLISSON. Sir, it was based on a legal document, a legal contract which we have out of Philadelphia.

Chairman MANZULLO. That doesn't answer the question. Legal contracts don't write checks, people do.

Lieutenant General GLISSON. Yes, sir. The way that—

Chairman MANZULLO. Who wrote the check to pay for—

Lieutenant General GLISSON. Sir, the Defense Finance and Accounting Office wrote the check.

Chairman MANZULLO. They wrote the check.

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. Did you ever contact them when you got my letter, saying, "Here's the letter from the ranking minority member or the chairman of the Small Business Committee, saying that there could be possible violations of applicable federal law?" You never contacted them?

Lieutenant General GLISSON. Congressman, I did not. I sent a copy of that letter to the Office of the Secretary of Defense and to their Legislative Liaison, Public Affairs.

Chairman MANZULLO. Now who is that?

Lieutenant General GLISSON. I will have to ask Mr. Oliver for the name of the person there, Congressman. I don't know. But it was not—

Chairman MANZULLO. Was it Larry Dorita at the time?

Lieutenant General GLISSON. Congressman, I don't know. I guess the point that I would try to make to you it was not an effort to ignore you or anything like that. I think they honestly were trying to gather the right facts from which to make a public response.

Chairman MANZULLO. Our office contacted yours when this letter wasn't answered. Were you aware of that?

Lieutenant General GLISSON. Congressman, I was not.

Chairman MANZULLO. Mr. Oliver, do you know anything about this letter, April 5th?

Mr. OLIVER. I think it is sitting on my desk, sir, because what happens is, as Tom said, is we got several letters and we were trying to get organized to make sure we gave you good answers.

Chairman MANZULLO. And we got none.

Mr. OLIVER. Yes, sir.

Chairman MANZULLO. It is sitting on your desk? This letter is sitting on your desk?

Mr. OLIVER. It is not physically on my desk, but I know it is someplace in a——

Chairman MANZULLO. This is a letter from two members of Congress.

Mr. OLIVER. Yes, sir.

Chairman MANZULLO. We are here representing thousands of small business people in this country that are losing contracts on a daily basis because of bungling going on by the federal government. And this letter is sitting on your desk, and it hasn't been answered. That is what you are telling me.

Look at Michele Goodman. She is the one that lost 100 employees. Why can't you answer a letter from two members of Congress?

Mr. OLIVER. It will be answered this week, sir.

Chairman MANZULLO. It will be answered this week probably along with the contract bundling report that you were supposed to have before us a year ago, and it got filed last week.

Ms. VELÁZQUEZ. Eighteen months later.

Chairman MANZULLO. Eighteen months later.

Ms. VELÁZQUEZ. Correct?

Mr. OLIVER. Yes, sir.

Chairman MANZULLO. You know, I am just too totally shocked. So it was up to you to answer this letter, correct?

Mr. OLIVER. No, it was not up to me. You asked physically where it was, I gave you an honest answer. It is on my desk right now with the——

Chairman MANZULLO. But it is up to you to answer the letter, is that correct?

Mr. OLIVER. No, sir.

Chairman MANZULLO. You had authorized General Glisson to answer the letter.

Mr. OLIVER. Congressman, as you know, we have spent a great deal of time on this issue, and we really have tried to think through this. And there is lots of things that have gone on.

Chairman MANZULLO. It is a very simple question. How do you answer a letter to two members of Congress? Or you just ignore it, you think we are insignificant?

Mr. OLIVER. No, sir.

Chairman MANZULLO. Or does it go with your philosophy that the Department of Defense has the final answer? I mean, have you seen this letter?

Mr. OLIVER. I have seen that letter, sir.

Chairman MANZULLO. And when did you first see it?

Mr. OLIVER. Probably the day you sent it over, sir.

Chairman MANZULLO. April 5th or the day that General Glisson sent it.

Mr. OLIVER. Whenever——

Chairman MANZULLO. General, I presume you sent it over as soon as you got it.

Lieutenant General GLISSON. That is correct.

Chairman MANZULLO. And it is just sitting on your desk. It has taken you a month to think about answering this letter.

Mr. OLIVER. Actually, I have had several answers to that letter, Congressman.

Chairman MANZULLO. No, I understand. But you know what we are asking for? We asked that you cancel contracts. And do you know what you did? First, you paid money to the Chinese, isn't that correct, for Chinese production. And then you canceled it.

Mr. OLIVER. Not that one.

Chairman MANZULLO. What do you mean, not that one.

Mr. OLIVER. Not the Chinese one.

Chairman MANZULLO. The Chinese one has been canceled.

Mr. OLIVER. No, it hasn't. It will be completed at the end of this month.

Chairman MANZULLO. Are the Chinese still in production at this point?

Mr. OLIVER. The Chinese are still in production, and—

Chairman MANZULLO. Did you tell them to stop production?

Mr. OLIVER. We can't sir.

Chairman MANZULLO. So you are going to take all these berets and pay for them?

Mr. OLIVER. We are going to. By contract, we have to.

Chairman MANZULLO. You are going to take all the berets and pay for them?

Mr. OLIVER. Sir—

Chairman MANZULLO. Yes or no?

Mr. OLIVER. Yes. Yes, sir. Absolutely.

Chairman MANZULLO. And then what are you going to do with them?

Mr. OLIVER. Then we are going to resell them. We are going to consider some of the suggestions about how we dispose of them. What we have thought about is disposing them by reselling them by foreign military sales to those countries who use them.

Chairman MANZULLO. We are a middleman for small businesses. When members of Congress send letters, these are red flags. Did you ever offer to come into my office and talk to me about this?

Mr. OLIVER. No, sir.

Chairman MANZULLO. Did anybody from your office say, "You know, two members of Congress have requested an answer"?

Mr. OLIVER. No, sir.

Chairman MANZULLO. And how many of these letters did you have from members of Congress?

Mr. OLIVER. I don't recall, sir.

Chairman MANZULLO. Was it five, 10, 15?

Mr. OLIVER. I didn't count them, sir.

Chairman MANZULLO. You have no idea?

Mr. OLIVER. We were trying to answer the best possible answer to you.

Chairman MANZULLO. But you didn't give us any answer. Somehow I can't get that across.

Mr. OLIVER. Yes, sir. I understand, and I accept it.

Chairman MANZULLO. And you—

Mr. OLIVER. No, I understand it, sir. I just don't have an answer for it.

Chairman MANZULLO. I mean, do we have to go through this every time there is a waiver of Berry?

Mr. OLIVER. Well, I am trying to fix that. I told you how I did. I pulled that back so that I have to make that determination.

Mr. PASCRELL. Mr. Chairman?

Chairman MANZULLO. Yes?

Mr. PASCRELL. I have one more question to add on to yours.

Chairman MANZULLO. Yes.

Mr. PASCRELL. What is the quality of the work of the berets that are made in China?

Mr. OLIVER. Congressman, that isn't a good question. It happens to be the best possible.

Mr. PASCRELL. It is the best possible?

Mr. OLIVER. It is the best.

Mr. PASCRELL. In other words, if we went to an outfit that knew what they were doing, we would have a better product. So this is the best we can expect from that factory where they are.

This is the best work they can do. You don't mean that.

Mr. OLIVER. No.

Mr. PASCRELL. What do you mean?

Mr. OLIVER. I mean it is the best beret we are getting.

Mr. PASCRELL. It is basically the beret that we saw before.

Mr. OLIVER. It is the best beret of any of the people we contracted with.

Chairman MANZULLO. Is this better than Bancroft's?

Mr. OLIVER. I will ask Tom to answer that.

Lieutenant General GLISSON. Yes, sir, it is.

Chairman MANZULLO. How is it better?

Lieutenant General GLISSON. Better quality, better workmanship.

Chairman MANZULLO. And at what price?

Lieutenant General GLISSON. At less than the Bancroft price, sir.

Ms. VELÁZQUEZ. Ms. Goodman? She would like to comment.

Chairman MANZULLO. Ms. Goodman.

Ms. GOODMAN. Yeah. I believe that the Chinese berets were bought by Kangol.

Lieutenant General GLISSON. That is correct.

Ms. GOODMAN. Wasn't their price considerably higher than—

Lieutenant General GLISSON. The price on the Kangol beret is \$6.24 each. The price on the Bancroft Beret is \$6.30 each.

Ms. GOODMAN. And the labor cost of the two?

Lieutenant General GLISSON. I mean, that is the acquisition price that we paid.

Chairman MANZULLO. Ms. Goodman, you could have made these berets, is that correct, the one piece?

Ms. GOODMAN. No, sir.

Chairman MANZULLO. No. I mean, if you had some time to gear up and get some equipment.

Ms. GOODMAN. The situation is a little bit more complicated than that. The machinery that is currently used hasn't been made in over 50 years.

Chairman MANZULLO. Okay.

Ms. GOODMAN. There are no spare parts for it.

Chairman MANZULLO. What about the blocking machine?

Ms. GOODMAN. There is machinery to make a two piece beret, okay? The Army has failed to even consider sitting down with in-

dustry, not just myself, but other small businesses who have put forth the effort to try and work with them to come up with a solution.

As far as the one-piece knitted beret, there are many obstacles. The only way that they can get what they want is by doing it over a long-term basis. Machinery would have to be made that would copy the process of a very antiquated machine into a new machine.

And whether the equipment people are willing to put forth the effort and the funds to do that is yet to be determined because the Army never gave American small businesses the opportunity to present this position.

Mr. PASCRELL. Mr. Chairman?

Chairman MANZULLO. Yes.

Mr. PASCRELL. Doesn't that sound rather peculiar that one item was \$6.30 per beret, and the other, coming across the ocean, is \$6.24? We have a word for that in New Jersey which I won't repeat. But doesn't that strike you as rather strange, General?

Lieutenant General GLISSON. Congressman, based on the prices that we saw with the other contracts, they are all reasonably in line with each other within a dollar or so of each other. The lowest is \$4 and something up to the range of \$7 and something. So they are all within that price range.

Mr. PASCRELL. Did Atlas bid first? Did you have their number in first before you got the number from China?

Lieutenant General GLISSON. Sir, we never got that far as she testified because the Army rejected her beret. So she never made an offer that I am aware of on a price.

Mr. PASCRELL. Well, who bid besides this—

Ms. GOODMAN. I did make a bid. Excuse me.

Mr. PASCRELL. You did make a bid.

Ms. GOODMAN. I did bid on a two piece stitched beret, yes.

Mr. PASCRELL. You did?

Ms. GOODMAN. Mm-hmm.

Mr. PASCRELL. Is that correct, General?

Lieutenant General GLISSON. Congressman, I don't know whether she bid or not. There was no requirement for a two-piece beret. What she offered was, in fact, a two-piece beret at a price. The Army rejected that, so it was never considered as part of the—

Mr. PASCRELL. Well, how did you wind up in China?

Lieutenant General GLISSON. Congressman, basically, what we did is, as I said previously, at the time we knew three manufacturers, Bancroft, Dorothea in Canada, and Denmark out of New York City. Those were the three that we did directed awards to because we knew them to be in business today, and we knew they could make the beret.

We then did an open competition worldwide, and we invited anybody who could produce berets to come in. We called people who had berets, asked them where they got them from.

Mr. PASCRELL. Did you call the Chinese manufacturer?

Lieutenant General GLISSON. We talked to Kangol, which is a United Kingdom manufacturer who manufactures berets for the British army and other countries. And they did produce a beret.

We got samples from all of the proposals. We looked at them, examined them for quality. We took a look at the companies to see

if they were responsible companies, went through the normal contracting procedures that one would go through before we made the award. And we ended up then with the four additional awards, two U.S.-based foreign produced and two foreign-located foreign producers.

Mr. PASCRELL. They were all produced outside the United States.

Lieutenant General GLISSON. That is correct. Yes, Congressman.

Mr. PASCRELL. Who was the contact with the Chinese? Who has the responsibility in the chain of command as far as these kinds of manufacturing contracts are concerned, what office?

Lieutenant General GLISSON. Well, the acquisition took place in my Philadelphia buying office through the contracting officer there. He also has a Senior Procurement person there who watches him. That then flows back up to the Senior Procurement Executive in the Agency.

Mr. PASCRELL. So you would expect that the Philadelphia office would reach out to foreign countries and companies, and that is how they reached out to the company in China? Is that how that works?

Lieutenant General GLISSON. At the point in time when it was determined there was no domestic capacity to produce these berets and still meet the Army requirement, at that point in time, then they did a worldwide search, which they are authorized to do. And then they can go offshore to try to determine if, in fact, there are sources to meet the compelling requirement.

Mr. PASCRELL. Are you also telling us that because of the disqualification of some of the berets that were made in some parts of the world, we are still in contract with the Chinese company. That is right?

Lieutenant General GLISSON. The United Kingdom—

Mr. PASCRELL. We are not going to be able to meet the deadline anyway, are we?

Lieutenant General GLISSON. Based on the production schedule, that is correct, Congressman.

Mr. PASCRELL. So we did all of this. It is amazing.

Chairman MANZULLO. If the Chinese cannot meet the deadline, then they are breaching the contract, isn't that correct?

Lieutenant General GLISSON. Sir, the Kangol contract from the United Kingdom, which has a production plan in China is, in fact, ahead of schedule. They accelerated schedule. They have been our best producer to date.

Chairman MANZULLO. General, did you ever convey to General Shinseki or anybody on the staff that perhaps they could consider making a two piece beret so it could be homemade?

Lieutenant General GLISSON. Congressman, we did. We actually took the sample that Ms. Goodman gave us. We gave it to the Army to look at. The Army came back and said they disapproved it. They would not use that beret.

Chairman MANZULLO. Who gave it to whom? Who from your agency—

Lieutenant General GLISSON. Sir, my Supply Center in Philadelphia gave it to the PM soldier, which is the requirement generator for this particular contract and for this requirement.

Chairman MANZULLO. Mr. Bartlett.

Mr. BARTLETT. I would just like to ask for a point of clarification.
 Lieutenant General GLISSON. Yes, sir.
 Mr. BARTLETT. We did not directly contract with the Chinese firm, did we?
 Lieutenant General GLISSON. We did not, Congressman.
 Mr. BARTLETT. Okay.
 Lieutenant General GLISSON. We contracted with the United Kingdom company.
 Mr. BARTLETT. Okay. Yes. And then they subcontracted to China?
 Lieutenant General GLISSON. That is correct, Congressman.
 Mr. BARTLETT. Okay. I just wanted to make that clear.
 Lieutenant General GLISSON. We knew their plant was in China.
 Mr. BARTLETT. Yeah.
 Lieutenant General GLISSON. I don't want to mislead you.
 Mr. BARTLETT. But our contract was not with the Chinese company. It was with the——
 Lieutenant General GLISSON. With Kangol, which is the United Kingdom.
 Mr. BARTLETT. Okay. And then they had the work done in China.
 Lieutenant General GLISSON. They own that plant in China. That is not a sub-contractor.
 Mr. BARTLETT. Yeah. And you knew when you let the contract that it was going to be made there.
 Lieutenant General GLISSON. I did. I did, Congressman. And we were concerned at the time about child labor, not about procurement from China. Hindsight is wonderful, obviously.
 Mr. BARTLETT. How many of our weapon systems do we procure from China?
 Lieutenant General GLISSON. Sir, I don't buy weapon systems. I can't tell you.
 Mr. BARTLETT. You don't. Okay. Do we buy other clothing from China?
 Lieutenant General GLISSON. Generally not, no, sir.
 Mr. BARTLETT. Thank you.
 Chairman MANZULLO. Well, we want to thank you all for coming. It is obvious what has happened here is that when we started off——
 Ms. VELÁZQUEZ. Mr. Chairman?
 Chairman MANZULLO. I am sorry?
 Ms. VELÁZQUEZ. I have a last question for General Glisson.
 Chairman MANZULLO. Yes. Go ahead. Please.
 Lieutenant General GLISSON. Yes, ma'am.
 Ms. VELÁZQUEZ. You mentioned to us before that you communicated with a staffperson from the chief of staff about—you know that it will require to award the contract to a foreign company.
 Lieutenant General GLISSON. That is correct. Yes, ma'am.
 Ms. VELÁZQUEZ. Can you please tell us the name of that person?
 Lieutenant General GLISSON. Yes, ma'am. My counterpart on the Army staff is Lieutenant General Mahan, M-a-h-a-n.
 Ms. VELÁZQUEZ. Thank you.
 Lieutenant General GLISSON. Yes, ma'am.
 Chairman MANZULLO. I want to thank you all for coming. I don't know how you summarize this incredible weave of events, but the

victims out there are the people that this Small Business Committee is trying to protect.

It is obvious to me that General Shinseki was never advised as to the availability or the unavailability of domestic production until some time mid-February. He stated that, and I believe him.

It is also obvious that if he had known about that, that he would have changed the procurement date or the date necessary to fulfill the needs. He stated that, and I believe him.

But what has happened here is this incredible maze of people, lack of accountability, failure to give this Small Business Committee documents that it needs. We did request them, we had to subpoena them. And as a result of all these memos and everything going back and forth, we end up with the incredible situation of American people having to buy these Chinese berets, having to pay for them, and now they are not being used.

And I would suggest the following, that if the cries of the members of Congress had been heeded initially way back when, that efforts could have been made to stop the production of these berets in China. But no one heeded that, not until the eve of this hearing when yesterday, miraculously, all kinds of things happened. Three contracts were cancelled. The Chinese berets would no longer be used. That happened as the order came down from Mr. Wolfowitz yesterday.

And yet General Shinseki stated it, and I believe it, that as long as six weeks ago he was imploring procurement not to use Chinese berets.

Now isn't that interesting? He is the one who gave the order for June 14th. He is the one that could have changed that date. He is the one that could have put an end to Chinese production, and no one listened to him.

This meeting is adjourned.

[Whereupon, at 2:12 p.m., the Committee was adjourned.]

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-0515

May 2, 2001

OPENING STATEMENT

CHAIRMAN DONALD A. MANZULLO
COMMITTEE ON SMALL BUSINESS

*Black Beret Procurement:
Business as Usual at the Pentagon?*

Good morning and welcome to this hearing of the Committee on Small Business. A special welcome to those who have come some distance to participate and to attend this hearing.

I would like to extend a especially warm welcome to General Shinseki. He is a true patriot having served two tours in Vietnam and was wounded twice in combat.

Let me make it clear that this hearing is not about the policy decision to have all active U.S. Army personnel wear berets. Nor is the hearing about what color beret a particular unit within the U.S. Army is going to wear. This hearing is narrowly focused on the decision to purchase berets from foreign sources.

I readily acknowledge that the Committee on Small Business has no jurisdiction over the policy issues of whether the U.S. Army should wear berets and the color of those berets. These two issues are settled and are not within the jurisdiction of this committee. The military leaders of this Nation who have to make the difficult decisions to place our young men and women in harm's way deserve our respect.

The only reason why we are holding the hearing today is to discuss the procurement issues. This Committee has both legislative and oversight jurisdiction to insure that small businesses are not bypassed in the federal procurement process. I would respectfully request that the committee Members limit their questions to procurement issues.

General Shinseki has told me, and I am sure he will tell the Committee, that if he had been informed the berets were being manufactured overseas because of the short time period needed to acquire the berets, he would have changed the date of delivery and possibly other requirements.

Our purpose is to try to get the Department of Defense to follow the existing rules of procurement and possibly to seek legislative remedies.

You will hear in this hearing a gross disregard of the procurement rules. The number of textile manufacturers and apparel and shoe manufacturers in this country continues to dwindle.

Congressman Walter Jones, Jr. was scheduled to testify at the hearing originally scheduled for April 5th. That same week, Congressman Jones received word that the district he represents lost over 1,000 textile related jobs.

As Chairman of the Committee on Small Business, I have an obligation to these small businesses that are being impacted by the military's refusal to follow the procurement laws. The report of the Inspector General of the Department of Defense, dated over two years ago, shows that nearly 60% of procurements of military clothing made by that Department violate some procurement laws and regulations.

It is ironic: while our Army is ready to fight to keep us free, the Defense Logistics Agency, a totally separate entity, continues to frustrate our laws, which will result in the destruction of our domestic small businesses.

The paramount issue in this hearing is why couldn't these berets be manufactured in the United States?

As a rule of order, I fully intend to keep the questions and answers to five minutes; we have several panelists and Members here. Mrs. Velazquez, as the Ranking Member, and I as the Chairman, may exercise our discretion to use more than five minutes. Please don't ask a question for four minutes and forty seconds and then expect to have more time available. I will strictly enforce the five-minute rule. I can assure you of that.

Again thank you. I now yield for the opening statement from my good friend, the Ranking Member, Ms. Velazquez.

Nydia M. Velázquez, Ranking Democratic Member
 Opening Statement
 Small Business Committee
 Hearing "Pentagon Army Berets"
 May 2, 2001

Thank you Mr. Chairman.

Today's hearing continues our efforts to shine light on the contracting practices of the Department of Defense, which are effectively deterring this nation's small businesses. This is the sixth hearing we have held that looks at the contracting practices of this agency and every time we ask the question: Why aren't small businesses being awarded prime contracting opportunities? The answer of the Department of Defense -- well, we make "big stuff" and these are contracts that small businesses just can't handle. First of all, you and I both know that's wrong.

Second of all, when a contract opportunity is presented that small businesses can handle -- you yank the rug right out from under them by providing unrealistic timelines based on arbitrary deadlines. You then create product specifications that are so restrictive as to defy the imagination -- like a beret that is made as one piece. My concern today is that we are taking opportunities out of the hands of our nation's economic foundation -- our small businesses -- for what, on its face, is a subjective deadline.

Why do we have one U.S. manufacturer? I'll tell you why. Because only one U.S. company has the equipment -- the machinery used to manufacture the one-piece, knitted beret no longer exists. Which begs a whole host of questions -- Why is this beret so exclusively made? Is the beret indestructible? No. Is the beret bulletproof? No. Is the beret wearable in combat? No. So when I ask the question, the answer I get -- the Department of Defense thinks the beret "looks better" with no seam. "Looks better?" -- so now fashion consciousness is the new excuse the Department of Defense uses when they sidestep federal regulations on small business procurement.

But I will tell you all that this is not the end of the issue. I want the Army and the entire Department of Defense to know we are going to be holding your collective feet to the fire on this and other procurement issues. We will not allow the DoD to carry on as they have previously -- and use the same old tired excuse they have for the past seven years. And I will tell you that there is no way that this Committee will sit still while small business participation is continually blocked.

First it's contract bundling. Now we are talking about unduly restrictive specifications and arbitrary timelines. Frankly, I wait with eager anticipation to see what DoD will come up with next - - - because these excuses just aren't going to work anymore, so I suggest you either come up with something new or do something to solve the problem!

I believe that problems such as the ones we are examining in this hearing will continue until we pass substantive legislation - - - like the Small Business Contract Equity Act. This legislation gives small businesses necessary protections in government contracting. Mr. Chairman, I want to thank you for your tenacity in pursuing this issue.

I believe that you are right on the mark in holding this contract-specific-hearing because it seems that these forums are the only way to get the Pentagon's attention. It is my hope that today we can commit to holding regular contract specific hearings – starting with the DLA's Trident Contract that has affected small businesses throughout Ohio and the Midwest.

I want to close by saying that we are here today for one purpose and one purpose only - - - to defend the interests of America's small businesses from every quarter. And nowhere are those interests more threatened than when it comes to issues like this. And I believe that as we defend those interests – we are protecting the future of the American economy.

Thank you Mr. Chairman, and again, I look forward to more investigative hearings like this where we get to the bottom of these practices by the Department that are detrimental to our nation's small businesses.

**OPENING STATEMENT FOR CONGRESSMAN DARRELL
ISSA
House Committee on Small Business
May 2, 2001**

Thank you, Mr. Chairman. I am very pleased to have the opportunity to discuss this issue, which is not only important to American Small Businesses, but is also an issue near and dear to my heart as a proud former member of the US Army.

I understand that many diligent efforts were made to ensure that American small businesses were given a chance to supply black berets to the military within a given timeframe. However, I take issue with this self-imposed deadline and have several concerns as to why an emergency decision was made to rush the order of Black Berets when there was, in fact, no emergency at all.

The decision to change a deep-rooted Ranger tradition is not a decision that should be rushed because of its strong implications on military tradition and American small businesses, who thrive on having the honor of supplying their nation's military clothing. In my view, the law known as the "Berry Amendment" does more than just ensure military readiness by keeping dependable domestic sources for uniforms. As a former U.S Army officer, I believe that the intent of the law relates very strongly to the overall morale of U.S. forces.

I am pleased to hear this morning that U.S. troops will not be wearing berets made in China or made with Chinese content. This should not be viewed as a slight against the Chinese people, rather, it should be viewed as a question of morale and patriotism for the U.S. Army. Any country, including China, can understand the desire to have domestic businesses supply its military clothing. I ask my colleagues to consider the morale of an Army Ranger.

Again, I thank the Chairman and I look forward to discussing this important issue.

RECORD VERSION

STATEMENT BY

GENERAL ERIC K. SHINSEKI
CHIEF OF STAFF
UNITED STATES ARMY

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

FIRST SESSION, 107TH CONGRESS

ON ARMY BERET ISSUES

5 APRIL 2001

NOT FOR PUBLICATION
UNTIL RELEASED
BY THE COMMITTEE
ON SMALL BUSINESS

STATEMENT BY
GENERAL ERIC K. SHINSEKI
CHIEF OF STAFF, ARMY
ON ARMY BERET ISSUES

Mr. Chairman, distinguished members of the committee, thank you for your invitation to appear before you today. I would briefly like to explain The Army's recent decisions about its headgear.

The Army's beret decisions, both the decision regarding the black beret last October and the one regarding the tan beret this month, are about change. Change is difficult, especially in proud and respected institutions.

The Army is changing. We are transforming today's most powerful Army in the world from a Cold War Legacy Force to an Objective Force with early entry capabilities that can operate jointly, without access to fixed forward bases, and still have the power to slug it out and win campaigns decisively. This Transformation will correct the condition in today's Legacy Force where our heavy forces are too heavy, and our light forces lack staying power. To master this strategic transition and to establish the parameters for decisiveness in the 21st Century, The Army must become adaptive to be strategically responsive and dominant across the entire spectrum of military operations.

To symbolize The Army's commitment to transform itself into the Objective Force, The Army will adopt the beret for wear Army-wide. This decision is not about increasing recruiting; we achieved our recruiting target of 180,000 recruits last year and are meeting our goals again this year – without a beret. It is not about retention; for the second year in a row, we exceeded our reenlistment goal by a wide margin – without a beret. It is not about morale; Soldiers are ready today to go into harm's

way. It is about our excellence as Soldiers, our unity as a force, and our values as an institution. It is about change.

An important aspect of change is speed. We chose the Army's Birthday, the 14th of June 2001 to symbolize our ties to our past, and to demonstrate that The Army could accomplish this change effectively and quickly. Thus, the timing was symbolic of both our proud history and our future force.

Many different units have worn berets throughout our history. In the case of the black beret, other formations, to include armored units, cavalry units, other infantry units, have worn it over time. Because of that shared history in our Army, the black beret remains the most relevant color for wear Army-wide today. And after considering several options over these intervening months, the Ranger Regiment requested and The Army approved the tan beret for wear by Rangers. Now, the Ranger tan beret will continue to symbolize that great regiment and its challenges for the 21st Century. And whatever those challenges are, Rangers will continue to lead the way.

These decisions are about our excellence as Soldiers, our unity as a force, and our values as an institution. This is about building trust and confidence in our formations, formations that will be defending this country in the 21st Century. This is about teamwork, teamwork that's based on that foundation of trust and confidence between soldier and soldier, between leader and led, between unit and unit serving side by side all across the Army. This is about the magnificence of that American soldier who has been defending our country for 225 years.

Mr. Chairman, I will be happy to answer your questions.

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Statement of
The Honorable Lois Capps
Before the
Committee on Small Business
May 2, 2001

Thank you, Mr. Chairman. It is a pleasure to be here this morning. I commend you, Ranking Member Velazquez, and the Committee for your interest in this most important subject.

As you know, on October 17, 2000, Army Chief of Staff General Eric Shinseki issued a change in uniform policy for all Army personnel, ordering that each individual soldier be outfitted with a black beret by June 14, 2001. While the decision to outfit soldiers with a matching headgear has been very controversial, my purpose for testifying this morning is not to comment on the wisdom of this policy change, but rather to protest the procurement procedures that have been used to make this purchase.

Specifically, I am very concerned with the short-term and long-term implications of the Pentagon's decision to purchase over 4 million black berets from companies that will manufacture these items in foreign countries, including the People's Republic of China, Romania, Sri Lanka, India, South Africa, and Canada. These contracts, which would normally go to U.S. small businesses, reportedly total \$30 million.

In its decision to purchase black berets from foreign suppliers, the Defense Logistics Agency (DLA) bypassed normal procurement procedures. It also waived the so-called Berry Amendment, 10 U.S.C. 2241. The Berry Amendment restricts DOD from acquiring most food, clothing, fabrics, specialty metals, and hand or measuring tools, unless those items are grown or produced in the United States. It also restricts foreign access to U.S. government defense procurement by giving preference to U.S. based, domestically produced or manufactured, or home-grown products. The Berry Amendment was first passed in Public Law 77-29 on April 5, 1941, and became permanent law in the 1993 Defense Appropriation Act (Section 9005 of P. L. 102-396, 10 U.S.C. 2241 note).

As I understand, DLA issued the lead contract to Bancroft Cap Co., the sole beret manufacturer in the United States, for its maximum production capabilities (1.2 million berets). Subsequently, DLA awarded contracts to companies with foreign manufacturing to supplement the quantity that could not be provided by the domestic manufacturer. These contractors are Dortha Knitting Mills, located in Toronto, Canada (1.08 million

berets) and Denmark Military Equipment, located in New York (480,000 berets). Dorthea Knitting Mills manufactures berets in Canada while Denmark Military imports berets that are manufactured in Romania. In its decision to award these two contracts DLA may have sidestepped normal procurement procedures by not generating public notification for bidding prior to awarding contracts. It appears this action would be in violation of the Competition in Contracting Act of 1984, 41 U.S.C. 253.

According to DLA, the total quantity was still insufficient to support the Army's requirements in the specified time frame, resulting in DLA's decision to waive the Berry Amendment to pursue additional foreign sources of supply. Again, as I understand, this decision was made within days of public notification for bidding. This is also very disturbing. It is my understanding that the Berry Amendment can be waived when items grown or produced in the U.S., cannot be acquired when needed, in sufficient quantity and with satisfactory quality. Exceptions can also be made when items are procured outside of the U.S., in support of combat operations, as long as costs do not exceed the simplified acquisition threshold of \$100,000. However, I have been informed that the American apparel industry could have produced the one-piece berets the Army requested -- rather than the two-piece sewn items that the American firms currently manufacture -- if these firms had been given sufficient lead time to fill the order. The facts surrounding this purchase raises questions as to under what circumstances Berry Amendment provisions should be waived. The arbitrary deadline has resulted in potential U.S. manufacturers being left out of the bidding process, cost U.S. firms millions of dollars, and sent this business to foreign companies.

In addition, consistent with the DLA's Nonavailability Determination, manufacture of the beret requires specialized machinery. While Bancroft Cap Co., may be the only domestic source to possess such equipment, a representative from Atlas Headgear, Inc., notified me of her company's alternative to the one-piece beret. While I will leave the specifics of this substitute to her testimony, I believe that DLA's decision to agree on a one-piece beret may have been unwise. First, the antiquated machinery used to produce the one-piece beret will result in higher costs to the Pentagon. It has been reported that the cost of a beret made overseas ranges from \$4.36 to \$7.20, compared to \$6.30 that is being charged by the sole American manufacturer and the \$4.75 that would be charged by other U.S. companies. Second, if DLA's stated goal is to optimize domestic production, I do not understand why the Pentagon did not move to produce two-piece berets, which can be readily produced in the U.S., in order to satisfy the Army's requirement.

Because of the Pentagon and Army's insistence, the additional contracts were awarded to Bernard Cap Company, Florida, with manufacturing in South Africa (375,000 berets); Northwest Woolen Mills, Rhode Island, with manufacturing in India (196,032); Kangol LTD, United Kingdom, with manufacturing in China (308,968); and CW Headdress, United Kingdom, with manufacturing in Sri Lanka (120,000). The follow-on awards totaled 1 million berets, with options for an additional 1 million.

As stated in DLA documents, these follow-on awards were exercised to allow the Pentagon to "meet General Shinseki's directed troop issuance dates." These seemingly

arbitrary deadlines resulted in potential U.S. manufacturers being left out of the bidding process, cost U.S. firms millions of dollars and sent this important business to foreign companies. The total dollar value of this waiver was approximately \$6.1 million.

Mr. Chairman, Congress has long recognized the importance of maintaining a strong industrial base in clothing and other critical materials. Concerns over the health of U.S. manufacturing facilities, protecting production capacity, keeping the industrial base production lines open, and insuring that the U.S. would not be dependent on foreign suppliers, were all part of the original debate on the Berry Amendment, and they should be today. Through the Berry Amendment, our Defense procurement establishment is able to maintain a stable of independent, competing producers who understand the military specifics of different items and who have the commitment to service the U.S. military. They are there for our military when there is a surge in requirements, and they must be there during peacetime. However, if we continue along this current path, we may find American producers absent when we need them.

I believe, like many of my colleagues sixty years ago, that the intent of this legislation is still valid to ensure an industrial base so that U.S. military troops wear uniforms wholly made in America. The Berry Amendment and other domestic source restrictions, like the Buy America Act, were adopted to maintain a strong manufacturing relationship with domestic producers and give preference to products that are manufactured in the United States from American components. Surely, these small businesses, such as Atlas Headgear, Inc. are an important part of this industrial base, and should be commended for their role in outfitting our armed forces. I am confident that this company, as well as others, could have fulfilled the Army's request. In addition to reducing costs, improving response time, and increasing quality, the Pentagon would have been protecting the American industrial base, and more importantly, American jobs.

Military uniforms are a powerful symbol for U.S. soldiers, representing who they are and what they stand for. That is one reason why they are manufactured in our own country, except in times of crisis. The Army's decision to purchase the black berets from companies who manufacture them overseas may undermine the very morale and unity the Army was attempting to instill in its forces with its decision to outfit its soldiers in matching headgear. This decision will also harm U.S. companies and American workers, and may in fact waste taxpayer dollars.

For these reasons, I recently wrote, along with 79 of my House colleagues from across the political spectrum, to President Bush requesting the Administration reconsider the Army's contract and amend the contract awards to perhaps allow U.S. companies a greater opportunity to participate in the production of the black berets. At a minimum, the Department of Defense should employ its traditional procurement process that ensures fair and cost-effective military purchasing standards, and make certain that American companies manufacture the additional million berets that may be requested by the Pentagon. To date, I have not received a response from the President or any other Administration official.

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Representative Walter B. Jones
Testimony before the House Small Business Committee
May 2, 2001

Chairman Manzulo, Ranking Member Velazquez, and Members of the Committee, let me thank you for the opportunity to testify on this important issue.

Let me first say, that I, like many other members of the committee, am pleased that the Army and the Department of Defense have decided to reverse a very troubling aspect of the Black Beret issue. Their decision to prevent the procurement of any berets manufactured in China or made from Chinese materials is a great step in the right direction. However, despite this commendable act, I believe we must take the final logical step and preserve Black Beret for the Rangers.

From the moment I first heard of the decision I was outraged. The badly made and even more poorly executed decision demonstrated a complete disregard for the history and proud tradition of the Rangers. The careless disregard for the beret that has come to symbolize their excellence and sacrifice was in my opinion the height of arrogance.

I had the privilege of meeting with Sergeant David Nielsen of Virginia and Sergeant Bill Round of New Bern, North Carolina following their long and grueling march to Washington.

I know that Sergeant Nielsen is here today and I want to acknowledge the efforts of he and Sgt. Round to call attention to this issue. I firmly believe that had they and their fellow Rangers not made the 750 mile march from Fort Benning Georgia to Washington that this Congress might very well have dropped this issue a long time ago.

But the unquenchable Ranger spirit that dwells within them would not let them simply give in on this issue. As a result, we have searched out the genesis of this decision and held hearings to get to the bottom of information that has been uncovered in the process – information that otherwise might have never seen the light of day.

Because they marched we also know that the Berry Amendment was bypassed just to meet an arbitrary deadline.

While I believe that the 226th birthday of the United States Army should be marked with great fan fare, I don't believe for a moment that any of our brave men and women in uniform would want to celebrate the symbolism of this important event at the expense of

the Ranger proud heritage of those who serve beside them or the countless numbers of Rangers who have fallen before them.

As a small businessman myself, I know how difficult it can be to make ends meet. During this process I have heard from small businessmen and women in my home state of North Carolina who constantly face the threat of closing their doors. One gentleman who wrote to me said that his small textile business supports 80 families, and yet he struggles to keep his plant operating because he has to compete with cheap labor and goods from foreign competitors.

He would have gladly spent the money necessary to convert some of his operations into a facility that could help produce berets for our men and women in Uniform. Yet, he didn't initially get that opportunity because the decision had already been made to bypass the Berry Amendment and spend millions of American taxpayer dollars in foreign countries, including initially Communist China.

The bottom line here is that we have small businesses that are struggling, troops without adequate ammunition to train, and pilots who can't fly because of a lack of funds – so why in the world would the Army spend 23 million dollars to simply change the color of a hat?

Even if you remove the location of the manufacturers from the equation, this whole process still doesn't add up. Just like a dead fish – this boondoggle is rotting from the head down.

I have introduced legislation that will hopefully help prevent a situation like this from ever happening again. This legislation, H.R. 1352, would make three modifications to current procurement practices. First, it would codify the Berry Amendment into Title 10, hopefully clearing away some of the ambiguity or confusions around the law. Second, it would require that for any future decision to waive the Buy America provisions in Berry, Congress, specifically the Appropriations Committees, the Armed Services Committees, and the Small Business committees, would have to be notified. Finally, it would require that after such notification a 30-day cooling off period would be in effect before any waived contract could be executed. The changes are simple, but my hope is that these minor adjustments will give pause before any future decision to unnecessarily waive the Berry Amendment occurs.

I've heard from many of our retired and active duty Rangers -- and believe me when I say that contrary to what has been reported, they are not pleased with the decision to change their beret designation to tan.

Chairman Manzulo I want to again thank you and your committee for calling this hearing so that the Small Business Committee can flesh out exactly how the decision to bypass the Berry Amendment was reached.

At long last the ill fated decision to change the Army headgear from folding green hats to black berets appears to be dying a slow death; It is my great hope that by your efforts today the Congress and the Administration can stop this outrage once and for all and restore the emblem that has for so long been a symbol of excellence in the United States Army – the Ranger Black Beret.

STATEMENT OF
LIEUTENANT GENERAL HENRY T. GLISSON, UNITED STATES ARMY
DIRECTOR, DEFENSE LOGISTICS AGENCY
BEFORE THE
HOUSE COMMITTEE ON SMALL BUSINESS
MAY 2, 2001

Mr. Chairman and distinguished members, I appreciate the opportunity to appear before the Committee today to address the procurement of black berets by our Defense Supply Center Philadelphia (DSCP). I, along with senior DLA and senior DoD procurement officials, thoroughly reviewed the acquisition. I am satisfied that the procurement was proper, that American sources were used or proper determinations of domestic nonavailability were made, and that small businesses were used to the full extent possible.

DLA enjoys an excellent relationship with the small business community. We endeavor through our socio-economic programs to ensure that our small business partners continue to be viable and robust. We view them as full partners and essential components of the defense industrial base, particularly for commodities such as clothing and textile (C&T) items. Last year, small businesses received nearly 70% of our \$1 billion in C&T contracts.

DLA's strong support for small business is well reflected by the work of DSCP, which awarded \$1.6 billion in contracts to small businesses in Fiscal Year 2000. In so doing, DSCP exceeded the \$1 billion dollar mark for the eleventh consecutive year. In the first half of Fiscal Year 2001, DSCP awarded more than \$5 million under the HUBZone Program, including \$3.5 million to firms that are also owned by Native Americans.

DSCP made every effort to maximize small business participation in contracting for the black berets. The beret requirement was set at 1.3 million for Summer 2001, 1.3 million for Fall 2001, and then a 1.3 million annual sustainment quantity. DSCP used its

market knowledge to determine domestic production capabilities before considering foreign production. DSCP's acquisition strategy to meet the total 3.9 million-beret requirement was proper. In addition, it was focused on maximizing domestic and small business participation in contract awards.

DSCP made a directed award to Bancroft Cap Company, a small business and the only known domestic producer, for that firm's total stated production capacity of 100,000 berets per month. At that monthly rate, the beret delivery would take over three years with no backup suppliers to accommodate production slowdowns or requirement increases.

DSCP next contacted every domestic producer of military headwear they knew. One firm initially expressed interest in performing at least part of the manufacturing process domestically. That firm, however, submitted an alternate item consisting of a woven and sewn rather than knitted beret. DSCP submitted this proposed substitution for evaluation. It was unacceptable because it did not conform to the appearance of existing berets.

The extremely limited domestic manufacturing capacity drove DSCP to make determinations and findings permitting purchase of foreign-produced berets. In this regard, DLA awarded contracts to three domestic small businesses that would produce the berets in foreign countries. DLA also awarded contracts to three foreign firms that would produce the berets in foreign countries.

DSCP's efforts to increase domestic small business participation did not cease with the award of these beret contracts. DSCP published a notice in the Commerce Business Daily seeking additional sources. To date, eight domestic companies have

made inquiries. After discussion and receipt of technical documents, however, no follow-on contact has been received. Thus, we have identified no additional domestic resources to supplement Bancroft Cap Company's domestic production.

DSCP has been diligent in applying the Berry Amendment, which permits purchase of foreign products when there is no domestic availability. DSCP usually has been able to identify or develop a domestic source for the final end products that their customers require. The domestic manufacturers DPSC contacted stated that the technology and machinery required to manufacture the berets dates back 50 years and is not readily available at an affordable cost. When no other domestic production sources besides Bancroft Cap Company were found, DSCP looked to domestic firms with access to foreign product and consulted with the military in foreign countries, such as the United Kingdom, for potential sources of supply.

On the basis of their market research, DSCP made domestic non-availability determinations in accordance with the provisions of the Defense Federal Acquisition Regulation Supplement and the Berry Amendment. As noted previously, three domestic small business firms were identified and awarded contracts for foreign-manufactured berets. DSCP also awarded contracts to three foreign firms, one in Canada and two in the United Kingdom. Of the six awards for foreign-made berets, three were made to domestic small business firms with foreign production. DSCP continues its efforts to find additional domestic sources to support sustainment requirements.

DLA stresses the importance of small business participation in its acquisitions. DSCP's performance, exemplified by the award of more than \$1 billion in contracts to small businesses in each of the last eleven years, has earned DSCP a reputation as a

mainstay of DoD's small business program. DSCP's efforts to identify and develop additional small business beret producers continue.

I would like to thank you, Mr. Chairman, and the other members of the Committee for the opportunity to discuss with you our support of America's small business community.

Testimony of
Michele I. Goodman
President, Atlas Headwear, Inc.

Before the Committee on Small Business
U.S. House of Representatives

April 5, 2001

Good Morning. Thank you for the opportunity to discuss the treatment of small businesses dealing with government procurement policies. My name is Michele Goodman. I appear here today on behalf of 120 people from Atlas Headwear, Inc., located in Phoenix Arizona. We are a women-owned-small business, employing mostly Hispanic and other minority women. This year we will complete 20 years of manufacturing for the Department Of Defense. We currently manufacture the hot weather cap for the Army and Air Force through the Defense Supply Center Philadelphia (known as "DSCP") and the Navy and Recruit cap for Nexcom in Virginia. We have manufactured in the past the Temperate BDU Cap, Desert Sun Hat and the Marine Corp Utility

cap. Atlas does have commercial work as well, manufacturing for golf, fashion, outdoor product, theme parks and other industries.

I was asked to speak today about two issues; first, the issue of the Pentagon's decision to waive the Berry Amendment when it decided to purchase berets from foreign sources, and secondly, the larger issue of Pentagon procurement policies. In the interest of time, and because General Shinseki was available to be here today, I'd like to focus my oral testimony on the beret issue and leave the other issues to my written testimony. I would encourage the committee, however, to carefully read the written statement regarding the other Pentagon procurement issues, as I believe they are as important to small businesses as the beret issue has become.

I submit to you that I was closely involved in the events that took place regarding the beret decision, and that my testimony is accurate from a first-hand perspective. On Oct. 17, 2000 Gen. Eric Shinseki, the Army Chief of Staff, announced a directive to

provide all Army personnel with berets by the Army's 225th birthday. The due date for having the first berets in hand (in order to meet the June 14 date) was April 2001, meaning contracts had to be quickly placed for millions of berets with more than a million to be delivered in only five (5) months. General Shinseki apparently paid little attention to the fact that the task he was ordering had many obstacles before it, and should not have been rushed. Quite honestly, we had 225 years to plan for this. It was not a surprise situation. Proper planning for this transition could have prevented not only the serious wavier of the "Berry Amendment" but also would have prevented excess costs to the US government, U.S. taxpayers, and us, the small business community.

Normally, when a procurement solicitation is made by the officers at the DSCP, there is a fair and transparent process that takes place, where the DSCP works to ensure that not only does the military get quality products at an affordable price and in a timely manner, but that those items are procured from American manufacturers who make up the warm industrial base that supports the military in

times of both war and peace. These small businesses live and die by the fairness of this process and the people at DSCP, who work closely with businesses to meet this goal. However, in this case, the DSCP was forced to act in a manner that would shut out American manufacturers because they were given an impossible deadline to meet. The lack of planning and foresight exhibited by General Shinseki created this problem.

As a part of my written testimony, I have provided a timeline of the key events that occurred from the date the General's decision was announced, and this timeline highlights my company's attempts to be awarded part of the beret contract.

When General Shinseki gave the beret order, the Defense Logistics Agency (or, "DLA") did not question his decision; it is my understanding that they are not permitted to. The result was that contracts were let in a manner that conflicted with two laws; the Competition in Contracting Act and the Berry Amendment. The

Competition in Contracting Act was violated when two contracts were awarded to two companies even BEFORE a public notice was issued announcing that the contracts were open for bidding. When the solicitation for other bids was finally made public, the Berry Amendment was waived within days of the announcement and the contracts were awarded to foreign manufacturers. Both of these actions shut out potential American manufacturers who could have mobilized to fill the orders. I have with me a sample beret that I made in my attempt to bid for the contract. It was rejected; I was told "it doesn't look right". My attempts to work with the Army on designing a beret they could accept were repeatedly ignored.

I do not believe that Congress created laws such as the Berry Amendment and the Competition in Contracting Act for frivolous purposes. I believe that abusing them is a serious matter. I believe that American companies could have fulfilled the order had DSCP been given enough time to proceed properly and had the Army been more open minded.

The question then is, "What can be done at this point?"

It is my opinion that these contracts should be carefully reviewed for adherence to specifications and delivery requirements. It is quite possible that these foreign sources, which have no prior experience with the many important requirements of the DOD, are not in complete compliance with the contracts, thereby allowing for termination by default. Also, the government has the option to terminate these contracts for convenience, and this should be done on those contracts that have lengthy delivery schedules.

It should be directed that the Army work with Domestic manufacturers and equipment companies to explore alternatives to the current requirement for a one piece knit beret. The knit beret that the Army requested is manufactured on machinery that is antiquated and more labor-intensive than the more modern equipment used to produce the two (2) piece stitched beret. The labor requirement for the knit beret is the main reason that the cost is so high. Additionally, the one-piece beret is going to have to be

replaced in the near future because the machinery and spare parts for the machinery are no longer manufactured. Forward-thinking countries such as Italy are already contemplating this change.

They have been perfecting the two-piece beret, and could offer assistance in perfecting ours to the Army's liking. The Army needs to explore other types of headwear that would express the General's wish for unity, excellence and values. The current decision and the results of this decision (buying from Third World Countries at significantly higher prices) do not achieve any of these goals. An American made, stitched beret would provide the following advantages to the Army:

1. Provide the Army with a beret for which the manufacturing machinery will be available in decades to come.
2. Reduce Cost
3. Improve response time
4. Increase Quality Consistency
5. SAVE AMERICAN JOBS and protect the military's warm industrial base of American suppliers.

As requested in your invitation I would like to address other recent events in the government procurement process that seem unfairly damaging to small businesses. First, our company, as previously stated, has two current government contracts. In both instances we were the low bidder. However, the government, in both cases, awarded only half of the quantity to us, and the other half to large businesses at higher prices. I can understand wanting to do this, if the low bidder is an unknown contractor or one with a questionable record. However, Atlas is well-known, well-respected and a proven supplier. The results were substantial lost revenues and jobs to a small business, in favor of large business and an increased cost to the government. Please note, in fairness to the government they did stipulate in the bids that either one award or more could be made in one solicitation and the other clearly stated that more than one award would be made. Regardless in the end, it was not in the best interest of the government in either case, or small business.

Other recent events that illustrate the battle that small business faces in doing business with government, specifically DOD branches, are;

1. The Air Force (Dobbins AFB) awarded a contract (F09609-C-0010) for an AF Reserve Ball Caps in October 1999. This was a total small business set aside, yet the contractor was allowed to subcontract the entire order to a large business. The total value of the contract was \$389,000.
2. The Air Force (Randolph AFB) issued a Solicitation (F4RSAM03550100) on 01/17/01 for 105,000 AF Recruit Caps. The response date was a mere two days later, with delivery required by March 15th 2001 (less than 60 days later. Seven amendments to the Solicitation had to be issued after we called seven times (as well as many other companies) to the PCO, indicating omissions of necessary information by the contracting officer, or to explain the meaning of the “Berry Amendment”. Eventually on 2/22/01 the solicitation was cancelled. It is our belief that they did not want to adhere

with Berry therefore canceling the bid. What happened to the urgent need? Was the requirement broken into smaller quantities to avoid triggering the Berry Amendment's \$100,000 threshold for applicability? The cost of the 105,000 caps would have been close to \$500,000. Did the Air Force buy these caps, and how would you go about finding out? There is information that might shed some light on the AF procuring policies, I have been informed that there is an agency "AFCAM" that is traditionally involved in Air Force procurements and they procure items under commercial standards, ignoring all the requirements for Berry and even Buy America, excluding small businesses as well. I don't know how accurate this information is, but it would be important to find out why the Air Force procurements are not following the law.

The ongoing bundling of items making it almost impossible for small business to manufacture there items for a variety of

government agencies most importantly DOD, but also U.S. Customs, U.S. Post Office, U.S.Treasury, U.S.Forest Service.

In closing, I would like to thank all of you for the time you have given me to address the struggle American small businesses have in trying to stay alive. We are not asking the government for a handout, simply a hand-up from a very uneven playing field.

I would be happy to answer any questions you have. Thank you.

United States General Accounting Office

GAO

Testimony

Before the Committee on Small Business, House of
Representatives

For Release on Delivery
Expected at 10:00 a.m.
Wednesday, May 2, 2001

CONTRACT
MANAGEMENT

Purchase of Army Black
Berets

Statement of David E. Cooper, Director, Acquisition and
Sourcing Management



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GAO-01-695T

Mr. Chairman and Members of the Committee:

Thank you for inviting me to participate in today's hearing on the purchase of berets for the U.S. Army. The Army's decision to issue black berets to all of its forces in just 8 months placed enormous demands on the Department of Defense's (DOD's) procurement system. In fact, at the time of the announcement, DOD had only one domestic supplier under contract to produce a maximum of 138,052 berets. To meet this challenge, DOD awarded contracts to purchase nearly 5 million berets at a cost of about \$30 million. DOD's contracting strategy consisted of increasing the domestic supplier's production, awarding contracts to known foreign sources, and procuring berets from additional sources, anywhere they could be found. My testimony will focus on two aspects of this strategy—specifically, the contracting procedures DOD used in purchasing the berets and circumstances surrounding waivers to the Berry Amendment, a statutory requirement to purchase clothing items from domestic suppliers.

Contractual Arrangements to Purchase the Berets

As you know, the Army Chief of Staff announced on October 17, 2000, that all Active, National Guard, and Reserve personnel would be issued black berets as part of their standard headgear. The Chief also announced that the troops would begin wearing the new berets on June 14, 2001—the Army's first birthday in the new millennium.

In response, the Defense Logistics Agency (DLA) modified the domestic supplier's existing contract in early November to increase monthly production from about 10,000 to over 100,000 berets per month. The modification added 1.2 million berets to the domestic supplier's contract. DLA then awarded contracts to purchase berets from two known foreign sources, which would deliver 1.6 million berets. Because a substantial shortfall still existed, DLA contracting officials intensified their efforts to identify other sources that could produce the berets and, in early December, competitively awarded four contracts to purchase one million berets from four additional foreign suppliers. In February 2001, when production problems surfaced and deliveries fell behind schedule, DLA exercised options on the competitively awarded contracts with the four foreign sources to purchase another million berets. (Details of the contract actions are included in app. I.)

Due to the extremely short timeframe for delivery of the berets to the Army, DLA contracting officials took a number of actions to expedite award of the contracts. For example, the first three contract actions in November 2000 were taken by DLA without providing for "full and open"

competition as required by the Competition In Contracting Act of 1984. According to contract documents, the contract actions were not competed because of an "unusual and compelling urgency," one of the circumstances permitting other than full and open competition. The basis for the unusual and compelling urgency was:

"The Army will be seriously injured if this action is not approved. The Army Chief of Staff has approved a uniform change for the entire Army and this action is imperative in order for this Command to support the service by the introduction date."

In addition, DLA contracting officials did not obtain a review of these contract actions from the Small and Disadvantaged Business Utilization Office for possible small business participation. Officials in the small business office said they would have conducted an expedited review to determine if a small business award was appropriate. However, a study conducted for the Principal Under Secretary of Defense for Acquisition, Technology, and Logistics concluded that the small business review was immaterial to the outcome given the time constraints and because only one domestic source was known to exist.

Also, in awarding a contract to one of the foreign sources, the DLA contracting officer was confronted with a price that was 14 percent higher than the price of the domestic supplier. The contracting officer performed a price analysis and determined the price was fair and reasonable. Contract documents explained that

"... the Contracting Officer must make immediate awards to attempt to meet initial fielding requirements of the Army, so there is no time to obtain detailed cost or pricing data, analyze that data, develop a negotiation position, negotiate with a firm, and then finally make award."

Nevertheless, when competition was introduced into the process at a later date, prices declined. Specifically, the price on the single largest noncompetitive contract was 27 percent higher than the average competitive price.

Despite all their efforts, DLA officials advised us that quality and delivery problems will prevent distribution of berets to all Army forces by June 14. In fact, the officials expect that less than half of the Army's forces will receive berets on that date. DLA officials also advised us that they are terminating three contracts because the contractors did not meet delivery requirements.

Waiver of the Berry Amendment

Over the years, Congress has restricted DOD's expenditure of funds for purchases of certain articles and items, including clothing, to American firms. The restrictions are contained in the so-called "Berry Amendment" that has been included in various forms in legislation since 1941. The Berry Amendment can be waived if it is determined that a satisfactory quality and sufficient quantity of articles and items cannot be acquired as and when needed at U.S. market prices. The determination to waive the Berry Amendment must be made by the Secretary of the department concerned, or a designee.

To meet the desired timeframes for purchasing the berets, DLA determined that domestic sources were unavailable to produce all of the berets required and that contracting with foreign sources was necessary. DLA contracting officials in Philadelphia prepared three waivers to the Berry Amendment. The Deputy Commander of DLA's Defense Supply Center-Philadelphia approved two waivers—on November 1 and December 7, 2000. DLA's Senior Procurement Executive approved the third on February 13, 2001.

As the first waiver was being processed, questions were raised by DLA Headquarters about whether officials in Philadelphia had the authority to waive the Berry Amendment. On November 8, 2000, DLA's Senior Procurement Executive requested that authority to waive the Berry Amendment be delegated to DLA. On February 1, 2001, the Principal Deputy Under Secretary of Defense (Acquisition, Technology, and Logistics) delegated authority to waive the Berry Amendment to DLA's Director and Senior Procurement Executive, with the provision that it may not be redelegated.

Upon receipt of the delegation of authority to waive the Berry Amendment, DLA's Senior Procurement Executive reviewed the waivers and, on March 23, ratified the approvals made by the Deputy Commander in Philadelphia. DOD's Deputy General Counsel for Acquisition and Logistics reviewed this matter and expressed the opinion that DLA officials could take these actions to ratify the initial waivers.

On April 24, 2001, the Principal Deputy Under Secretary of Defense (Acquisition, Technology, and Logistics) canceled the delegation of authority previously granted to the DLA Director and Senior Procurement Executive. The cancellation was taken to ensure that any request for a waiver to the Berry Amendment "receives attention at an appropriate level within the Department of Defense . . ."

A chronology of the events surrounding waivers of the Berry Amendment to purchase the berets from foreign sources is included in appendix II.

Conclusion

Mr. Chairman, clearly, the imposition of June 14 deadline placed DOD in a high-risk contracting situation. In their eagerness to serve the customer, DOD procurement officials chose to shortcut normal contracting procedures. The date allowed very little time to plan for the purchase of the berets and little room to respond to production problems. Ultimately, DLA will not be able to meet the Army's deadline. Had DOD taken more time to plan for this acquisition and follow well-established contracting procedures, such problems may well have been avoided.

Mr. Chairman this concludes my testimony. I will be happy to answer any questions that you or Members of the Committee may have.

Appendix I: Contracts for Black Berets

<u>Award date</u>	<u>Contractor</u>	<u>Quantity</u>	<u>Unit price</u>	<u>Total price</u>	<u>Country of origin</u>
11/2/00	Bancroft Cap Co.	1,200,000	\$6.30	\$7,560,000	Domestic
11/2/00	Dorothea Knitting Mills	1,083,504	7.20	7,801,229	Canada
11/6/00	Denmark Military Equipment	480,816	5.75	2,764,692	Romania
12/7/00	Bernard Cap Co.	375,000	5.95	2,231,250	South Africa
	C. W. Headdress	120,000	4.36	523,200	Sri Lanka
	Northwest Woolen Mills	196,032	5.05	989,962	India
	Kangol, LTD	308,968	6.24	1,927,960	China
2/14/01	Bernard Cap Co. (option)	375,000	5.95	2,231,250	South Africa
	C.W. Headdress (option)	120,000	4.36	523,200	Sri Lanka
2/22/01	Northwest Woolen Mills (option)	196,032	5.05	989,962	India
	Kangol, LTD (option)	308,968	6.68	2,063,906	China
Totals		4,764,320		\$29,606,611	

Appendix II: Berry Amendment Waivers

Nov. 1, 2000	DLA approves waiver-Dorothea Knitting Mills and Denmark Military Equipment contracts
Dec. 7, 2000	DLA approves waiver-Bernard Cap., C.W. Headdress, Northwest Woolen Mills, and Kangol, LTD contracts
Feb. 1, 2001	Delegation of authority to Director, DLA and DLA Senior Procurement Executive approved
Feb. 13, 2001	DLA approves waiver-Bernard Cap, C. W. Headdress, Northwest Woolen Mills, and Kangol, LTD contract options
Mar. 23, 2001	DLA Senior Procurement Executive reviewed and approved November and December waivers
Apr. 24, 2001	Delegation of authority to DLA Director and Senior Procurement Executive cancelled



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

Statement of

John Whitmore
Acting Administrator

U.S. Small Business Administration

Before the

House Small Business Committee

First Session, 107th Congress

April 5, 2001

Introduction

Good Morning, Mr. Chairman, Madam Ranking Member and distinguished members of the Committee. My name is John Whitmore. I appreciate the opportunity to appear before you as the Acting Administrator of the Small Business Administration (SBA). The Committee requested SBA's comments concerning the Department of Defense procurement of berets from China and other foreign suppliers. The Committee also requested SBA's views regarding the treatment of small businesses by DOD in other procurements.

The purpose of my remarks today is to discuss SBA's role representing small business in the Federal Procurement process, and in particular, Defense Logistics Agency (DLA)'s recent acquisition of black berets for the Army. I would also like to discuss how procurement reform has impacted small businesses.

SBA was created in 1953 partially in response to concerns about the need to maintain a reliable domestic industrial base for defense purposes.

Since then, SBA has sought to ensure that America's small businesses receive a fair share of Federal government contracts. SBA offers a number of services to assist small businesses to compete for Federal contracts. These include training and counseling small businesses on how to do business with the government and Federal buyers on how to utilize small business sources. One of our most important responsibilities is to review proposed acquisitions to identify both prime and subcontract opportunities for small businesses.

DOD Purchase of Headgear

Ordinarily, acquisitions such as the beret purchase are coordinated with one of SBA's Procurement Center Representatives (PCRs). The PCRs are located at major buying activities and are responsible for, among other things, reviewing all unrestricted and consolidated procurements to ensure small business participation to the maximum extent possible.

Where a PCR believes that a proposed procurement is in a quantity or dollar value that makes small business prime contract participation unlikely, the PCR will recommend alternative procurement methods which are intended to increase small business prime contracting opportunities. If SBA and the procuring activity continue to disagree regarding the proposed procurement strategy, the SBA may appeal to the head of the procuring agency.

During the last few years, identifying and evaluating cases of contract bundling have become an important part of our PCRs' responsibilities in their support of small business. Between 1998 and 2000, SBA's PCRs evaluated 124 cases of contract bundling, valued at approximately \$72.6 billion, and were successful in changing the procurement strategy to be more inclusive of small business in roughly 75 percent of these cases. In the remaining 25 percent, agencies felt that the savings achieved justified consolidating contract requirements. Some positive results of PCR oversight included: initiating small business set-asides; removing work from the consolidated solicitation, and retaining it in the 8(a) or small business set-aside programs;

and ensuring that subcontracting to small business was included as an evaluation factor and/or mandatory subcontracting to small business was required in the solicitation. It is important to note, however, that a PCR's review is not limited to bundled contracts. PCR's routinely review proposed procurement strategies to ensure small business participation whenever practicable.

Generally, SBA's PCR and the Small and Disadvantaged Business Utilization Specialist employed by a Federal agency's buying activity review the agency's proposed procurement strategy, including the extent to which small businesses will be used. The PCR reviews the procurement strategy to determine if there are small businesses capable of performing the particular requirement. However, a review of SBA records indicates we received no advance notification of the intended procurement strategy for the DLA purchase of the berets. This appears to be an isolated incident and we are working with DOD to review the matter further.

Small Business Participation and Procurement Reform

Our overall goal when working with the Army-and indeed all Federal agencies- is to maintain and nurture significant and meaningful opportunities for small businesses to satisfy agency requirements. Congress has repeatedly acknowledged that the participation of small firms is vital to the growth of the U.S. economy. Small business participation increases the competition for government contracts, diversifies the supplier network and generates the majority of technological innovations. We must therefore ensure that valuable opportunities for small businesses to engage in Federal contracting are not lost because insufficient consideration was given to strategies that might make it easier for them to compete or because contracts were unnecessarily large, complex, or geographically dispersed.

At the same time, we understand that agencies have a responsibility to make effective use of taxpayer dollars in meeting their needs and recognize the various legislative, regulatory and policy changes that have been undertaken over the last decade to help agencies achieve this result more easily.

For this reason, SBA seeks to achieve an effective balance between obtaining quality goods and services at fair and reasonable prices and ensuring that competitive small businesses are able to participate in Federal Government acquisitions.

Here are a few examples of what effective balancing entails:

- One product of procurement reform is the increased use of government purchase cards to streamline procurement processes under \$2,500 (so called “micropurchases), reduce administrative costs and process payments faster and more accurately. While these are important benefits, we still need to ensure that small businesses are not adversely impacted by the exemption which allows agencies to make micro-purchases without application of the small business reservation. To this end, the Administration has been working to ascertain data that could help SBA better assess the impact of these purchases on small businesses.

□ Agencies are also using multiple award contracts (MACs) and Government-wide acquisition contracts (GWACs) to achieve greater economic and administrative efficiencies and take advantage of advances in technology and changes in agency priorities in an opportune manner. At the same time, MACs and GWACs reduce the number of new contracts, which can reduce opportunities for small business. In addition, some MACs can be too large in scope for small businesses to participate in the competition. These two factors (fewer opportunities and larger contracts) could make it difficult for new and emerging small businesses that cannot compete on this scale.

A variety of strategies are available when using these tools to facilitate strong small business participation.

These include dividing requirements into functional areas to make it easier for small businesses to win prime contract awards, providing opportunities for small businesses to team with large companies, evaluating the quality of the subcontracting plan, or even establishing a MAC set-aside for small business. We applaud agencies that have pursued such strategies. Our goal is to increase agency consideration of these types of strategies so that valuable opportunities for small businesses are not lost when these vehicles are used.

- GSA's Federal Supply Schedule Program, which gives agencies access to a wide array of contractors offering a broad range of products and services, has been an increasingly popular vehicle for helping agencies to meet their needs. GSA statistics show that for fiscal year 2000, GSA awarded 6,904 schedule contracts to small businesses, totaling \$4.6 billion, and 1,733 contracts to large businesses, totaling \$9.1 billion.

Given the immense popularity of this growing multi-billion dollar program, the Administration is continuing to explore opportunities to increase the consideration given to small business schedule contract holders.

Procurement reform has also resulted in an increase in the practice of consolidating two or more contracts for goods or services into larger single “bundled” contracts. Of course, agencies must identify measurably substantial benefits before bundling contracts. SBA evaluates agency justifications for bundling and provides suggestions for procurement strategies that will maximize opportunities.

These procurement reform mechanisms have had a dramatic impact on Federal procurement. As noted above, the number of new small purchase (or simplified acquisition) actions has decreased significantly (to about a third of what it was five years ago). Similarly, the number of new contracts above \$25,000 has also significantly decreased.

Although the Federal Government reached it's overall goal for contracting with small businesses for Fiscal Years 1995-1999, the number of new contracts above \$25,000 decreased from 70,088 in FY95 to 41,075 in FY 1999.

DOD, as the largest Federal government consumer, uses all of the procurement reform mechanisms. SBA and DOD continuously work to ensure that small businesses receive a fair share of DOD procurement dollars as prime and sub-contractors. While some DOD components may experience difficulty in providing opportunities for small businesses, others meet or exceed their annual small business contracting goals. SBA appreciates these efforts and stands ready to provide assistance to any agency to further small business opportunities.

Closing

SBA recognizes the need to keep pace with procurement reform. We must be proactive and develop policies that are consistent with this changing procurement environment.

We believe significant progress can be achieved through encouraging private sector partnerships, emphasizing subcontracting as a revenue option, increasing the use of e-commerce in Federal procurement, and reviewing our Federal goaling process.

The end result will be enhanced small business growth and participation, streamlined acquisition procedures and truly competitive prices for the government and the taxpayers it represents.

While acquisition reform has many successes, we must work to integrate the goals and objectives of our small business programs into a changing procurement environment. We are willing to work with you to do so.

Thank you for your time. I will be happy to answer any questions you may have.



AMERICAN TEXTILE
MANUFACTURERS INSTITUTE

Statement of Evan Joffe

Springfield, LLP

Before the House Committee on Small Business

May 2, 2001



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Chairman Manzullo, Congresswoman Velazquez, members of the committee.

Thank you for this opportunity to appear before you today.

My name is Evan Joffe. I am the Market Manager of the Government Fabrics division of Springfield, LLC, a small business headquartered in New York with manufacturing operations in Gaffney, South Carolina. We employ approximately 370 associates in the manufacture of apparel fabrics worn by Air Force pilots, Army helicopter crews, Naval seamen, all servicemen in garrison, as well as by civilian fire fighters, utility and petrol-chemical technicians, hospital workers and many other career and uniform applications.

I am also the immediate past chairman of the Government Textile Procurement Committee for the American Textile Manufacturers Institute. ATMI is the national trade association for the U.S. textile industry, representing companies both large and small that manufacture thread, yarn and fabric which are used in items purchased by the U.S. military. ATMI also coordinates the U.S. Industrial Base Coalition for Military Readiness, an informal coalition of manufacturing, labor and agriculture groups and businesses that support maintaining a strong and reliable domestic defense industrial base.

Speaking as a leader looking at the challenges and uncertainties of the new millennium and trying myself to lead a group to succeed in facing these challenges, I applaud the Army Chief of Staff, General Eric Shinseki, for his efforts to transform and modernize the U.S. Army. Also daunting is the task of meeting the logistic needs of that new Army, which has been bravely met head-on by Lt. Gen. Henry Glisson of DLA. Today, my desire is to continue to support our "Defense Supply Team" and facilitate a closer working relationship between all team members to keep our forces ahead of the edge.

Speaking from my own personal experience with Springfield and my dealings with other member companies in ATMI, let me emphasize that the partnership between the United States Armed Forces and the domestic textile industry is fundamentally sound. But, like any good relationship, there are always improvements that can be made. And we constantly strive to work with the military in a cooperative manner toward that end.

One of the foundations of this relationship is the Berry/Hefner Amendment, a law first enacted by Congress at the onset of World War II, and renewed annually by Congress for fifty years until Congress made it permanent in 1992. This law has successfully protected our military readiness by ensuring that the Defense Department has dependable domestic sources for all clothing and textile items. As a point of information, it is estimated that our industry provides approximately 10,000 different textile products for end use by the military.

These items are provided not just by the large textile and other companies of the United States, but by countless small businesses such as my company. And to small businesses that have carved out niches for which they produce goods for the military, these military contracts represent business, they represent jobs and, in many cases, they represent survival. The U.S. textile and apparel industries combined lost approximately 540,000 jobs in the last ten years. We can't afford to lose more jobs -- and more small businesses -- because of military contracts going offshore to potential adversaries.

General Henry Shelton, the chairman of the Joint Chiefs of Staff, recently spoke at ATMI's annual meeting here in Washington. He is not your typical chairman of the Joint Chiefs -- he didn't go to a service or other military academy. He went to North Carolina State University where he received a degree in textile technology, and he even briefly worked in our industry before deciding to make the Army his career. He knows the military, and he knows textiles.

For him, it goes beyond the personal security in knowing that the parachutes he has used over the years and still uses are made in the USA. And it goes beyond our industry's past performance, from World War II to Kosovo, in meeting the urgent needs of the military. It goes to protecting our service men and women from the threat of chemical and biological weapons, which is an increasing concern. General Shelton said, and I quote, "I'm thankful that we can continue to call upon the American textile industry to help us meet that threat. You're an indispensable partner of our military forces, improving their prospects for success in future conflicts."

American small businesses in the textile industry make the fabrics that protect our service personnel from such threats, and our industry is proud of this. But if it weren't for the Berry/Hefner Amendment, what would prevent these and other essential items from having to be sourced abroad? If we allow our industrial base to erode to the point that we have to depend on foreign suppliers, it will not only hurt my company and others it will likely endanger our service personnel and jeopardize our military readiness.

Can you imagine what would happen if we become dependent upon China for items now required to be produced domestically? What if China opposes our actions in a foreign hot spot, such as they did in Kosovo? The recent incident involving U.S. and Chinese military aircraft, which caused this hearing to be postponed until our personnel were returned, has further escalated the tensions between our two countries. If our relations continue to be adversarial or there is some new dispute, what would prevent China from cutting off our supplies of military textile items being made there? The answer is, "Nothing." So I hope that, in the future, our military adheres to the requirements of the Berry/Hefner Amendment and does not seek waivers for anything less than a true emergency procurement.

This hearing today was prompted by the U.S. Army's decision to waive the Berry/Hefner Amendment in order to allow the expeditious purchase of black berets in time for the Army's 225th birthday celebration. I am aware that Ms. Goodman here, as well as at least one other company in ATMI, could have acquired the equipment needed to produce these berets, but they were not given adequate time to do so. The deadline of the Army's 225th birthday resulted in a waiver of the Berry/Hefner Amendment being granted, and contracts awarded to overseas manufacturers.

Let me reiterate that our partnership with the military works well -- but in this instance, a waiver of the Berry/Hefner Amendment was granted for reasons which really didn't have a strategic urgency. A more realistic deadline would have allowed U.S. manufacturers to gear up to produce these new items. And if the Army's plans to continue supplying berets to all its soldiers, that should provide enough certainty for U.S. manufacturers to make the necessary capital investments to gear up and provide berets that will be needed by the Army year after year.

We're not interested in pointing fingers regarding the recent beret controversy, but rather to see where we go from here. And this committee has an important oversight responsibility to look out for the long-term interests of small businesses throughout America.

The trend in recent years toward consolidations in all sectors of the defense supply industry, including textiles and apparel, can have negative repercussions for the military. With small companies being acquired by larger ones, the new, larger companies may not be able to make smaller run, niche items for the military. We need to maintain a small business supply sector to provide these vital niche products. Small businesses are a crucial part of the military supply chain, and the Berry/Hefner Amendment is important to them.

For the sake of America's small businesses who supply the military, and especially for our service men and women who need a reliable domestic defense industrial base, I hope and believe we can work together to ensure that American manufacturers, both large and small, continue to meet the military's needs. We already have a good supplier/customer relationship with the U.S. Army and the U.S. military. We just need to make it even better.

I thank you again for your invitation to appear, and I would welcome any questions that you might have.

STATEMENT OF
 PROFESSOR STEVEN L. SCHOONER
 GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

before the

U.S. HOUSE OF REPRESENTATIVES
 COMMITTEE ON SMALL BUSINESS

April 5, 2001

Chairman Manzullo, Congresswoman Velazquez, and members of the Committee, I appreciate the opportunity to appear before you today. I believe the black beret provides a unique opportunity to consider the role of Congressionally mandated policies in the federal procurement process.

Although Not A Scandal, This Is Not Model Behavior

Although easy to criticize, the beret procurement is not a scandal. No laws were violated – the buying agency took advantage of a specific exception in relevant law. Some might go so far as to suggest that it is a success story for the post-acquisition reform procurement system. In its best light, this is a story of a purchasing organization – the Defense Logistics Agency (DLA) – promptly and efficiently devising a plan to fulfill the stated needs of the end user. Nonetheless, as a matter of policy, there is room for concern and, arguably, criticism.

During the 1990s acquisition reform effort, confusing messages bombarded the acquisition community. The reform movement emphasized customer satisfaction and administrative efficiency. Let me be clear; government buyers *should* aspire to obtain what their customers (whether program managers or end users) want as quickly as possible. Because these procurement professionals are spending the public's money, however, other important goals must be considered.¹ Here, it appears that the Defense Logistics Agency (DLA) considered a Congressionally mandated policy that requires the purchase of clothing from domestic manufacturers. Nonetheless, foreign manufacturers will produce most of the black berets because the Army and DLA determined that fulfilling the Army's *desires* was more important than complying with the spirit of the Congressional mandate. (As I discuss below, the concern lies in the distinction between the Army's *desires* and its actual *requirements*.)

Social Policy and the Needs of the Government

Procurement statutes and regulations long have required that the procurement system

¹ See, e.g., my forthcoming article, *Fear of Oversight: The Fundamental Failure of Businesslike Government*, 50 AMERICAN UNIVERSITY LAW REVIEW ____ (2001).

further a broad range of social policies.² In buying black berets, Congress' intent was clear. The military must purchase clothing manufactured in the United States unless the military's needs can not be met at market prices by domestic manufacturers.³ If the military's needs cannot be met in a timely fashion, the statute permits clothing purchases from foreign manufacturers. Thus, the statutory language permits DLA to procure foreign berets *if* domestic capacity could not produce the berets "when needed." As the Army described its requirement to DLA, the Army *needed* the berets by a certain date, June 14, 2001.⁴ DLA acted accordingly. Yet legislators, policy-makers, domestic producers, and (of course) academics question the importance of the Army's temporal need. No pending crisis in October 2000 required that the Army obtain 4.76 million berets by June 14.⁵ Nonetheless the Army really *wanted* those berets

² See, e.g., 48 C.F.R. §§ 19 (small business programs); 22 (labor law compliance); 23 (environment, conservation, occupational safety, and drug-free workplace); and 25 (domestic preferences). There is no shortage of literature addressing these issues. See, e.g., Kelly Sherrill & Kate McQueen, *The High Price of Campaign Promises: Ill-Conceived Labor Responsibility Rule*, 30 PUB. CONT. L.J. 267 (2001); Jennifer McCadney, *Note: The Green Society? Leveraging the Government's Buying Powers to Create Markets for Recycled Products*, 29 PUB. CONT. L.J. 135 (1999); Richard J. Pierce, Jr., *Small is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firms*, 50 ADMIN. L. REV. 537 (1998); David A. Wallace & Steven L. Schooner, *Affirmative Action in Procurement: A Preview of the Post-Adarand Regulations in the Context of an Uncertain Judicial Landscape*, ARMY LAW. 3 (September 1997); Gilbert J. Ginsberg & Janine S. Benton, *One Year Later: Affirmative Action in Federal Government Contracting After Adarand*, 45 AM. U. L. REV. 1903 (1996); Steven L. Schooner, *The Davis-Bacon Act: Controversial Implementation of the 50% Rule*, 5 CONSTRUCTION LAW. 9 (No. 3, 1985); Julius Rothlein & Steven L. Schooner, *The Trade Agreements Act -- Installation Procurement and International Government Acquisition Law*, ARMY LAW. 1 (September 1983); Thomas E. Reynolds & Cyrus E. Phillips IV, *Evaluation Procedures under the Buy American Act and Executive Order*, 3 PUB. CONT. L.J. 219 (1970); Arthur S. Miller, *Government Contracts and Social Control: A Preliminary Inquiry*, 41 VA. L. REV. 27 (1955).

³ The text of 10 U.S.C. § 2241 note is attached (with emphasis added).

⁴ The Chief of Staff of the Army explained that: "Effective 14 June 2001, the first Army birthday in the new millennium, the black beret will become standard wear in The Army--Active and Reserve Components." CSA's Message, *The Army Black Beret* <<http://www.army.mil/beret/>>. The Army News Service stated that: "The chief of staff announced Oct. 17 the Army will begin wearing the black beret on the next Army birthday, June 14." *Id.*

⁵ It appears that Bancroft -- a domestic small business -- has the capacity to produce as many as 100,000 berets per month. I understand that DLA has ordered 1.2 million berets from Bancroft. This suggests an obvious question: Did the Army need the berets at a rate in excess of 100,000 per month? If so, a number of logical questions follow. Could Bancroft increase its capacity and, if so, how long would it take and, could the Army wait that long? If Bancroft could not increase its capacity, how long would it take for other domestic manufacturers to meet the

(continued...)

by June 14, a purely symbolic deadline.⁶ As such, the beret procurement demonstrates a self-imposed time crunch. (As discussed below, this typically does not permit avoidance of Congressional mandates.) Yet, under a strict reading of the relevant statute, this self-created exigency probably provided sufficient legal justification to permit purchase of foreign berets (despite the wishes of Congress).

Again, DLA *could* procure foreign berets if domestic capacity could not produce the berets “when needed” by the Army. Contemporary dictionaries define *need* as a lack of something required *or desirable*, something required *or wanted*.⁷ Although synonyms for *need* include *necessity*, *exigency*, and *requisite*, these synonyms imply a greater level of urgency than contemporary usage of *need* would suggest.

Need is the most general. . . . *Necessity* more strongly than *need* suggests urgency, inevitability, or unavoidable obligation
Exigency implies acute urgency, especially that arising from conditions or circumstances such as those of an emergency
Requisite applies to something indispensable. . . .⁸

Here, the Army *wanted* a large number of berets rather quickly. The DLA *wanted* to fulfill the Army’s *desires*. The statute permits this behavior. This behavior, nonetheless, seems inconsistent with Congressional intent.

CICA: A Useful Analogy

The Competition in Contracting Act of 1984 (CICA),⁹ which requires full and open competition in government procurements, offers a useful analogy. Seven statutory exceptions to

⁵(...continued)

Army’s needs? By now, DLA should know the answer to these questions. On December 13, 2000, the Defense Supply Center Philadelphia posted a notice in the Commerce Business Daily seeking domestic producers of black berets that “may be in a position to be considered for follow on procurements or for any initial issue requirements we may be unable to fill from current contractors.” See the appendix for a copy of the CBD announcement.

⁶ “It is not about increasing recruiting; . . . It is not about retention; . . . It is not about morale. . . .” CSA’s Message, *The Army Black Beret* <<http://www.army.mil/beret/>>. The Army News Service stated that: “Shinseki said the beret will be a *symbol* of the Army’s transformation to a lighter, more deployable force.” *Id.* (emphasis added).

⁷ See, generally, WEBSTER’S II NEW COLLEGE DICTIONARY (1995); *Dictionary.Com* <<http://www.dictionary.com/cgi-bin/dict.pl?term=need>>.

⁸ *Dictionary.Com* <<http://www.dictionary.com/cgi-bin/dict.pl?term=need>>.

⁹ 10 U.S.C. § 2304(a)(1)(A) (for defense agency procurements); 41 U.S.C. § 253(a)(1)(A) (for civilian agency procurements).

CICA permit the use of “other than competitive procedures.” Congress permitted agencies to use other than competitive procedures when “only one responsible source” can satisfy the needs of the executive agency; when the agency demonstrates “an unusual and compelling urgency”; or when the agency head “determines that it is necessary in the public interest. . . .”¹⁰

These exceptions exist because Congress did not intend government business to screech to a halt in the name of competition. But the exceptions are “narrowly construed because the acquisition planning process is intended to overcome all but the most compelling urgency situations.”¹¹ In other words, poor planning by agency leadership, which results in compressed time frames (or “crisis management”) does not justify avoidance of competitive procedures. Applying the analogy here, the Army’s rush to change its headgear to black berets – for symbolic reasons – should not justify the purchase of large quantities of foreign-produced berets.

Why We Should Not Be Surprised By This Procurement

Although, in my opinion, the procurement may not represent optimal decision making and appears contrary to policies established by Congress, I am not surprised by the outcome. In the classroom – which some might suggest is a place far removed from the “real world” – I attempt to impress upon my students that, as future lawyers, just because they can get away with something does not necessarily mean that it is a good idea. In the procurement community, it seems that this common sense message was drowned out by the most radical 1990s reform advocates. The new message is: promote customer satisfaction. Although conceptually valid and innocuous on its face, this message must remain tempered.

This message plays out in the constantly evolving relationship between program managers and contracting officers. Program managers define requirements based upon missions they are tasked to achieve. Contracting officers (CO) attempt to fulfill those requirements. The message of the 1990s acquisition reforms was that customer service – pleasing the program manager – merited increased emphasis. Consistent with that view, this looks like a situation where a contracting organization – tasked with providing purchasing services to support the achievement of agency missions – bent over backwards to fulfill a need described by the Army.

Government buyers *should* have every motive to please their customers. Their customers, of course, could include high ranking government officials, peers or co-workers, as well as the more ephemeral end users – such as astronauts, soldiers, sailors, pilots, park rangers, meat inspectors, agents, auditors and, of course, the public. These “customers” rarely appreciate the value of Congressionally mandated social policies that may delay or deter their ability to obtain needed supplies or services. Accordingly, it seems natural that government buyers might

¹⁰ 10 U.S.C. §§ 2304(c)(1), (2), (7); 41 U.S.C. §§ 253(c)(1), (2), (7).

¹¹ JOHN CIBINIC JR. & RALPH C. NASH, JR., FORMATION OF GOVERNMENT CONTRACTS 295-96 (3d ed. 1995) (“Unusual and compelling circumstances will not be found if the agency is slow in conducting the procurement. . . . [nor] will [it] be found when there is a lack of advance planning”).

disregard the policies to achieve greater customer satisfaction.¹² As a general rule, this makes sense. Unfortunately, the not-so-subtle message trumpeted during the 1990s was that it is more important to please the program manager than to adhere to long-standing procurement policies, particularly certain social and economic policies mandated by Congress.¹³

Most emblematic of the culture change sought by the reformers is the following language added to the Federal Acquisition Regulation: "In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority."¹⁴ The acquisition community rightly understood what this message was intended to convey – that buyers should run with whatever "wiggle room" is available. Customer service comes first, Congressionally mandated procurement policies finish second.

¹² Such is human nature.

We all know that conscience is not a sufficient safeguard; and besides, that conscience itself may be deluded; may be mislead, by an unconscious bias, into acts which an enlightened conscience would forbid. . . . [I]n the proverbial maxim, that honesty is the best policy, present temptation is too often found to be an overmatch for those considerations. These favourable attributes of the human character are all valuable, as auxiliaries; but they will not serve as a substitute for the coercive provisions belonging to Government and Law.

Speech in the Virginia State Convention of 1829-30, December 2, 1829, LETTERS AND OTHER WRITINGS OF JAMES MADISON, VOL. IV, 1829-1836 at 52 (1865).

¹³ Significant tension remains between social policies and greater procurement efficiency. For example, consistent with the National Performance Review's focus on efficiency and its preference for increased purchaser discretion, former OFPP Administrator Professor Steve Kelman periodically ran afoul of Congressionally mandated social programs. Some of Professor Kelman's most contentious experiences involved his perceived lack of interest in maintaining or promoting social programs. See, e.g., Stephen Barr, *Small Firms Want More U.S. Contracts*, WASH. POST, September 6, 1997, at A17 (discussing a leaked Kelman memo to White House Chief of Staff Erskine Bowles via OMB Director Frank Raines, which "underscored a seemingly never-ending policy battle that has grown out of recent procurement reforms . . . and increased competition by large and small companies to hang onto their share of the federal procurement pie." The memo drew "heavy criticism from lobbyists representing small business interests, who contend it essentially acknowledges that the administration's procurement practices are increasingly excluding small companies."); Dawn Kopecki, *White House Memo Irks Small Business*, WASH. TIMES, September 2, 1997, at C1.

¹⁴ 48 C.F.R. § 1.102-1

But it is not enough for our procurement professionals to focus on satisfying the program manager or the end user. Procurement involves the expenditure of public funds. In this manner, “the Federal government has been and always will be different from the commercial sector. Thus, while striving to make the Federal acquisition system more like its commercial counterpart, [we] continue[] to recognize the unique constraints that are imposed on public-sector organizations. No matter how commercial, competitive, or cost-effective the Federal acquisition system becomes, it ultimately will still be governed by public policies – policies that are driven not only by economic objectives but also by social and political considerations.”¹⁵

Is Patience A Virtue?

I do not mean to suggest that the federal procurement system must be slow, ponderous, or inefficient. In fact, DLA demonstrated that it has the ability to move quickly to meet the Army’s stated needs. Nor do I suggest that the procurement process should be less than responsive to program managers.

Here, however, no crisis required that the Army obtain these berets quickly. I do not doubt the Army truly wants these berets in time for its June 14 birthday. Almanacs and reference books team with dates commemorating births, achievements, and epochal events. The arbitrary selection of such a date, however, is not a compelling reason to avoid a Congressionally mandated policy.¹⁶ If it were, nothing would stop program managers from routinely mandating delivery by “next Friday.”

¹⁵ Procurement Round Table 2000, *The Federal Acquisition System: Transitioning to the 21st Century* at 6 (December 1999) <<http://www.contracts.doc.gov/cld/papers/21CentAcqn.pdf>>. The Procurement Round Table is a nonprofit organization chartered by former federal acquisition officials, serving pro bono, seeking to advise and assist the government in making improvements in federal acquisition.

¹⁶ We typically think of urgent and compelling needs in the context of military mobilization or disaster assistance. Typically, the justification for avoiding a Congressional mandate involves potential loss of life or risk of harm to significant government interests or resources. A senior GAO official recently described to me a classic example of an urgent and compelling need. The Forest Service obtained a large quantity of saplings. A prolonged procurement for the services needed to plant the saplings would have defeated the purpose – by the time the contract was awarded, the saplings would be dead. I see no such justification for the black berets.

Had the Army been more patient, it seems likely that most, if not all, of the Army's needs could have been fulfilled by domestic manufacturers.¹⁷ It seems reasonable to conclude, in this case, that the DLA *could* have accommodated the Army's desires while still endeavoring to further Congressionally mandated social policy. Better acquisition planning or, more specifically, more realistic definition of the Army's actual requirements, could have avoided this situation.

Conclusion

Mr. Chairman, that concludes my statement. For your convenience, I have attached to this statement the relevant statutory text. Thank you for the opportunity to share this information with you. I would be pleased to answer any questions you may have.

¹⁷ See, e.g., *supra* note 5. What is lacking here is patience, rather than prescience. This is not a case where the Army planned poorly (or late) for its upcoming birthday celebration. Rather, what happened here is that the Army, having decided that it wanted soldiers to wear berets, arbitrarily selected a deadline (the next Army birthday) that foreclosed the possibility of obtaining a sufficient supply of domestically produced berets in time for the putative celebration.

APPENDIX

10 U.S.C. § 2241 note (emphasis added)

RESTRICTIONS ON PROCUREMENTS FROM OUTSIDE OF UNITED STATES

Pub. L. 104-208, div. A, title I, Sec. 101(b) (title VIII, Sec. 8109), Sept. 30, 1996, 110 Stat. 3009-71, 3009-111, provided that: "In applying section 9005 of the Department of Defense Appropriations Act, 1993, Public Law 102-396 (10 U.S.C. 2241 note), during the current fiscal year and thereafter - "(1) the term 'synthetic fabric and coated synthetic fabric' shall be deemed to include all textile fibers and yarns that are for use in such fabrics; and "(2) such section shall be treated, notwithstanding section 34 of Public Law 93-400 (41 U.S.C. 430), as being applicable to contracts and subcontracts for the procurement of commercial items that are articles or items, specialty metals, or tools covered by that section 9005." Pub. L. 102-396, title IX, Sec. 9005, Oct. 6, 1992, 106 Stat. 1900, as amended by Pub. L. 103-139, title VIII, Sec. 8005, Nov. 11, 1993, 107 Stat. 1438; Pub. L. 103-355, title IV, Sec. 4401(e), Oct. 13, 1994, 108 Stat. 3348, provided that: "During the current fiscal year and hereafter, *no part of any appropriation or any other funds available to the Department of Defense, except for purchases for amounts not greater than the simplified acquisition threshold* covered by section 2304(g) of title 10, United States Code, *shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand or measuring tools, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices* and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: Provided, That nothing herein shall preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possessions when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements or where such procurement is necessary in furtherance of agreements with foreign governments in which both governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of title 10, United States Code: Provided further, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions."

**APPENDIX
COMMERCE BUSINESS DAILY NOTICE**

[Commerce Business Daily: Posted in CBDNet on December 8, 2000]
[Printed Issue Date: December 13, 2000]
From the Commerce Business Daily Online via GPO Access
[cbdnet.access.gpo.gov]

PART: U.S. GOVERNMENT PROCUREMENTS
SUBPART: SUPPLIES, EQUIPMENT AND MATERIAL
CLASSCOD: 84--Clothing, Individual Equipment and Insignia--Potential Sources Sought
OFFADD: Defense Supply Center Philadelphia, DSCP-CR, Building 6, 700 Robbins Avenue,
Philadelphia, PA 19111-5096

SUBJECT: 84--BERET, MAN'S BLACK (ARMY)
SOL To Be Assigned
POC Robert J. Panichelle, 215-737-5822; Ann E. Beecroft, 215-737-7830; Sarah DiDonato,
215-737-2460; John McAndrews, 215-737-3049

DESC: Sources Sought for Beret, Man's Black, Army. A definite response date has not been established for the receipt of offers. Therefore, a solicitation number has not been assigned. The Defense Supply Center Philadelphia is interested in potentially adding additional domestic producers for Beret, Man's Black (Army). Any such domestic producers may be in a position to be considered for follow on procurements or for any initial issue requirements we may be unable to fill from current contractors.

Item to be purchased is Beret, Man's, Black, Army. Commercial Item Description: A-A-55184 dated 10 March 1993. Pattern Date is 25 April 1995. Points of contact by e-mail or telephone for inquiries regarding Beret, Man's, Black, Army under this Sources Sought synopsis are Robert J. Panichelle (rpanichelle@dscp.dla.mil), 215-737-5822; Ann E. Beecroft (abeecroft@dscp.dla.mil), 215-737-7830; Sarah DiDonato (sdiDonato@dscp.dla.mil), 215-737-2460 or John McAndrews (jmcandrews@dscp.dla.mil), 215-737-3049.

EMAILADD: rpanichelle@dscp.dla.mil
EMAILDESC: Click here to contact the Contracting Officer via e-mail.
CITE: (W-343 SN508519)

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STATEMENT OF
HONORABLE DAVID R. OLIVER, JR.
PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
(ACQUISITION, TECHNOLOGY AND LOGISTICS)
AND
MR. ROBERT L. NEAL, JR.
DIRECTOR, SMALL AND DISADVANTAGED BUSINESS UTILIZATION
BEFORE THE
HOUSE COMMITTEE ON SMALL BUSINESS
MAY 2, 2001

Mr. Chairman and distinguished members, we appreciate the opportunity to appear before the Committee today to address the procurement of black berets by the Department of Defense. The Deputy Secretary of Defense, Secretary Wolfowitz, asked me to review the Defense Logistics Agency's procurement of black berets. I, along with my senior staff, including Mr. Bob Neal, and Defense Logistics Agency officials, have completed a comprehensive review of the procurement. We have determined that the procurement was done properly, proper small business practices were followed, and we bought American as much as was feasible.

Let me address the procurement practices first. In late October 2000, Defense Supply Center Philadelphia was given the requirement to have 1.3M berets by April 2001, and another 1.3M in July 2001. Philadelphia was exceptionally well prepared.

They have been procuring all enlisted headwear, including berets, for the Military Services for many years and knew all of the domestic vendors. Potential issue of berets to the Army was not a new issue. Philadelphia had conducted market research in 1990 and 1996 on berets and had just completed award of a contract in 1998 to Bancroft Cap Co., a small business in Cabot, Arkansas, the only domestic producer of the knit beret the Army requires.

Bancroft has been the sole provider of military berets for U.S. armed forces for over 20 years. Over 50 other domestic companies had been contacted over the years, to include NISH, and Federal Prison Industries, and none were interested or could meet the beret requirements. There were two other well known companies with this capability: Denmark, a U.S. based, small business company in New York with a subcontractor plant in Romania, could produce 40,000 monthly; Dorothea, a Canadian company with a production plant in Canada, could produce 60,000 monthly.

Since Bancroft, the only domestic manufacturer, would only bid to produce 100,000 monthly (their maximum stated capacity) and given the requirement and urgency (1.3 million berets by April, 2001; another 1.3 million berets by July, 2001, plus 1.3 million berets annually for sustainment), Philadelphia gave Bancroft a contract for their maximum capacity, then gave directed awards to Denmark and Dorothea to get some beret production started until they could find other sources of supply. It is important to note that if the entire award had only been given to Bancroft, based on their demonstrated production capacity, it would have taken until 2007 to meet the beret requirement.

At the same time, Philadelphia went back to the requirements official to ask if an alternative construction of the berets could be used to possibly open up more American producers. After these awards were made, another domestic headwear company, Atlas Headwear, offered an alternative construction beret for consideration. The alternative was submitted to the requirements official and disapproved.

Despite the use of the maximum stated capacity of Bancroft, Denmark, and Dorothea, production was still not sufficient to meet the customer requirement for berets. Accordingly, Philadelphia then conducted a worldwide search of beret producers and identified 15 foreign and 5 U.S. based companies (with foreign production) that might have the capability to produce the required beret. Extensive interviews were conducted with each. Philadelphia then conducted a full and open competition and awarded four more contracts. In addition, to monitor the production of these berets, the Defense Contract Management Agency has sent Government personnel to each of the manufacturers to ensure they are complying with local laws and other requirements established by Congress.

All U.S. companies are small businesses and almost 60% of the beret production from the total beret production will come from these U.S. based small business companies.

After these last 4 contracts were awarded, in December 2000, Philadelphia placed what is called a "sources sought" advertisement in the Commerce Business Daily. It is noteworthy that only thirteen telephonic or written inquiries were received with no follow-up contact after discussion or receipt of the technical documents. Bottom line--no additional domestic sources for berets have been identified to date.

In summary, my review team was impressed by Philadelphia's procurement practices.

With respect to following small business requirements, the personnel complied with the law. In fact, it is noteworthy that the Defense Department, even while buying stealth aircraft, tanks, submarines and aircraft carriers, still spends 40% of our contract dollars, on small or disadvantaged business. This is more that \$48 billion a year for America's small businesses! This figure includes \$26.9 billion in prime contracts and \$21.6 billion in subcontracts for Fiscal Year 2000. These figures are reflected in the Federal Procurement Data System and in the annual small business report to Congress.

In this case, as I have noted, Philadelphia has done several extensive searches and determined that only one domestic source exists to produce this item. However, in the conduct of contract awards, they made an administrative oversight and did not route their paperwork through the Small Business Administration's Procurement Center Representative for approval as required by regulation. Even though there was only one domestic source for the past 20 years and the market had not changed and the small

business advocate had approved contract action for berets as late as 1998, it was still a required step.

However, the procurement team made an error by not routing their paperwork through the Small Business Administration's Procurement Center Representative for his approval. Nevertheless, the review team and I both concluded that Philadelphia fully complied with good small business practices during the purchase.

With respect to buying American products as required by the law, Philadelphia also performed this properly. They got all they could from the one small business American company, and they then went to Canada and next to our allies in Europe. In all cases, they considered the facts and made determinations based on those facts that were reasonable.

After I received this review, we dug further and determined that during the last ten years there are only four cases in which waivers to the Berry Amendment for end items were granted for purchase outside of the U.S. Three were for religious vestments, which are only manufactured in Israel, Moslem countries, and Europe. In addition, a waiver was granted for the one-time purchase of leather gloves, when, just as in this instance, American industry was temporarily unable to provide for our soldier, sailors, airmen and marines. As soon as product capacity to meet the requirement was reestablished within the United States, uniform gloves purchases were made from American businesses.

In summary, our extensive review determined that procurement practices were proper, small business was used to the full extent possible, and American sources were used to the maximum extent possible.

We would like to thank you, Mr. Chairman, and the other members of the Committee for the opportunity to discuss with you our support of America's small business community.